

EXHIBIT 1A

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

ARNOLD LEONG,

Plaintiff,

v.

WARREN HAVENS, et al.

Defendants.

Case No.: 2002-070640

**DEFFENDANT'S DECLARATION IN
SUPPORT OF DEFENDANT'S EX
PARTE APPLICATION FOR AN ORDER
REGARDING A TIMELY FCC FILING
BY HAVENS TO REINSTATE
SKYBRIDGE'S NATIONWIDE FCC
LICENSES, SUBJECT TO JUDGE
ROESCH'S LATER ACTION**

**DATE: DECEMBEMER 20, 2017
TIME: 9:00 a.m.
DEPT: 18 (Hon. Jo-Lynne Lee)
RESERVATION NO.: R-1916622**

Declaration of Warren Havens.

1. I am the defendant in this case and declare under penalty of perjury the following. My background is extensively shown in past declarations in this case.

2. Exhibit 1 hereto is an FCC Order subject of this ex parte matter (the "FCC Licenses Termination Order"). It denies license extension and renewal applications by the Receiver Susan Uecker and due to those denials, terminates the subject "LMS" class licenses of Skybridge and one license of Telesaurus ("the Licenses") that cover most of the nation.

3. The FCC erred in this decision by not considering and ruling upon the facts and law I submitted, associated with the Receiver's applications (the "Havens 2016 Filing"). See Exhibit 2. Even though (as explained below) this filing was submitted on behalf of my interests

1 at issue, those interests are, under FCC law, to be considered in the decision in this matter (and
2 in other such cases) since I have clear legal standing as a “party aggrieved”¹ and on other legal-
3 standing bases as well.

4 4. I seek an Order in this ex parte matter so that I can submit to the FCC a filing by
5 the due date, the end of December 20, 2017, asking the FCC to reconsider and reinstate the
6 Licenses for reasons in the Havens 2016 Filing, along with any relevant new facts and law (see
7 below) that may also support the Havens 2016 Filing (the contemplated “Havens 2017 Filing”).

8 **What I ask for in this ex parte motion is simple: that the court authorize me to**
9 **submit again to the FCC my Havens 2016 Filing—that the California Court of Appeal**
10 **found I lawfully did submit (see following footnote below)—and that it be considered**
11 **on behalf of Skybridge and its Licenses at issue (in the FCC Licenses Termination**
12 **Order) and on behalf of Telesaurus for its one LMS License also at issue (in the**
13 **FCC Licenses Termination Order).²**

14 5. If this Order is issued, then Judge Roeach, upon his return and review, can
15 modify the Order as he sees fit. I propose an Order granting this ex parte motion that provides
16 for this condition. If the Order is granted, I will give a refer to it and attach it in the Havens
17 2017 Filing submitted to the FCC.

18 6. The Receiver did not, nor did the FCC (or any other party), assert in response to

19
20 ¹ See the standard of: a “person aggrieved or whose interests are adversely affected” in section
21 402 (b) (2) of the Communications Act (47 USC §402(b)(2)) as explained by the US Supreme
22 Court in *FCC v. Sanders Brothers Radio Station*, 1940, 309 U.S. 470, 642, 60 S. Ct. 693, 698,
84 L. Ed. 869, 1037 (US Supreme Court). See also *National Broadcasting Co. v. Federal*
Communications Com., 132 F.2d 545 (D.C. Cir. 1943).

23 ² See the Court of Appeal Alternative Writ, Exhibit 3 hereto, which includes:

24 “This court...determines that... petitioner was permitted to communicate with the
25 FCC as long as he clearly indicated he was not speaking on behalf of any
Receivership Entity.” (Emphasis added.)

26 The “petitioner” (my) FCC communication at issue in this Alternative Writ was the “Havens
27 2016 Filing” (defined above): Note: in the requested Order under this ex parte motion, I request
28 the Court to allow me to resubmit this Havens 2016 Filing to the FCC, this time “on behalf of”
not only my interests, but also “on behalf of” the two receivership entities whose licenses are
subject of the “FCC Licenses Termination Order” defined above—Skybridge and Telesaurus.

1 the Havens 2016 Filing, that it was not a proper filing under FCC law or on any other basis. As
2 noted below, the California Court of Appeal upheld the Havens 2016 Filing as a lawfully filed
3 pleading before the FCC.

4 Thus, it is too late, under FCC law and California law, for the Receiver or anyone to
5 allege that this Havens 2016 Filing is improper with regard to the receivership including
6 Skybridge and Telesaurus before the FCC.

7 The FCC has exclusive jurisdiction to consider and decide upon any filing submitted to
8 the FCC regarding any FCC licensing matter. See the US Supreme Court case *WOW v*
9 *Johnson*.³

10 7. If the requested Order is not issued, then it will be past the FCC strict deadline,
11 which is December 20, 2017, for me to submit the Havens 2017 Filing. ⁴

12 From my decades of experience in FCC matters including in the matters of these LMS
13 licenses, ***the Havens 2017 Filing is needed to attempt to revive these Licenses, even if the***
14 ***Receiver elects to submit any filing to revive the licenses.***

16 ³ *Radio Station WOW v Johnson*. Supreme Court of the United States, 326 U.S. 120 (words in
17 brackets and underlining added):

18 To be sure, the [Federal] Communications Commission's power of granting,
19 revoking and transferring licenses involves proper application of those criteria
20 that determine "public convenience, interest, or necessity." § 307 (a), 48 Stat.
21 1064, 1083, 47 U. S. C. § 307 (a). But insofar as the Nebraska [state court]
22 decree orders the parties "to do all things necessary" to secure the return of the
23 license, it hampers the freedom of the Society not to continue in broadcasting and
24 to restrict itself, as it properly may, to its insurance business. Equally does it
25 prevent WOW from [before the FCC] opposing a return to the Society, or, as the
26 United States suggests, from seeking another license of its own. These are
27 restrictions not merely upon the private rights of parties as to whom a State court
28 may make appropriate findings of fraud. They are restrictions [by the State court]
upon the [FCC] licensing system which Congress established. It disregards
practicalities to deny that, by controlling the conduct of parties before the
Communications Commission, the [state] court below reached beyond the
immediate controversy and into matters that do not belong to it.

⁴ The deadline is 30 days from the subject FCC Order, set in a Communications Act statute 47
USC §405 (and the related FCC rule 47 CFR §1.106). The FCC rarely grants any extension of
this deadline, and generally asserts that it cannot extend the deadline set in this statute.
(Exceptions may arise when the FCC itself is a cause of delay and other special exceptions.)

1 *If the nationwide (in most of the nation) Licenses in the FCC License Termination Order*
2 *are not revived, it will result in **catastrophic losses** --of the vast majority of the assets of*
3 *Skybridge Spectrum Foundation, worth in excess of one hundred million dollars, as my experts*
4 *has shown (submitted in this case) and as the expert for the plaintiff has also shown in this case;*
5 *and a loss of the public interest involved, and **greater losses to the public interest:***

6 *Skybridge is a nonprofit that is tax exempt under IRC §501(c)(3) that lawfully must act*
7 *only in the public interest with these Licenses. It obtained the licenses to support “Intelligent*
8 *Transportation Systems” (“ITS”) in this State and nationwide. This is needed for saving lives*
9 *and greatly reducing congestion, accidents, loss of time, and other adverse conditions currently*
10 *in the US highway systems.*

11 *I spent ten years, on behalf of Skybridge, defending (in FCC dockets 06-49 and RM*
12 *10403) the FCC rules for this “LMS” class of licenses- the only class that the FCC dedicated to*
13 *long-range ITS.⁵ This is shown in the subject rules and rulemaking. See 47 CFR §90.350 et*
14 *seq.:*

15 The Intelligent Transportation Systems radio service is for the purpose of
16 integrating radio-based technologies into the nation's transportation infrastructure
17 and to develop and implement the nation's intelligent transportation systems. It
 includes the Location and Monitoring Service (LMS)....

18 7. The FCC Order that terminated the subject Licenses, Exhibit 1, must be
19 responded to by the end of December 20, 2017 in an electronic filing seeming reconsideration
20 (primarily under FCC rule 47 CFR §1.106) and reversal of the FCC order that denied the
21 Receiver’s applications to extend and renew the subject nearly nationwide LMS Licenses of
22 Skybridge and the one LMS license of Telesaurus also at issue. The FCC does not grant
23 extensions of time for this sort of request for reconsideration in my experience since the
24 deadline is set in a statute (in the Communications Act, 47 USC §405).

25 8. Under FCC law, a licensee (or license applicant) cannot assert, by an authorized

26 ⁵ This was supported by the University of California Berkeley (experts in Intelligent
27 Transportation), and the Intelligent Transportation Society of America, and other leading parties
28 in Intelligent Transportation in the United States.

1 person, in seeking such reconsideration and reversal, cannot assert facts that were not given in
2 the subject FCC licensing applications there were denied, unless the facts are newly arisen after
3 the applications were filed (or could not reasonably have been known when the applications
4 were filed), or in the period they could have been supplemented; or unless there is relevant
5 newly arisen legal authority.

6 The Receiver has no, and has stated to me no, such newly arisen facts or law. Thus, I
7 do not believe the Receiver can effectively seek any reconsideration of this FCC decision
8 terminating these Licenses.

9 The FCC clearly rejected all of the facts and legal arguments that the Receiver
10 submitted, as clearly contrary to FCC rules and precedents.

11 Even if the Receiver submits a request to reinstate the Licenses, my planned 2017
12 Havens Filing should be submitted to greatly increase the chance that the FCC will revive the
13 Licenses, in some manner and to some degree.

14 9. On the other hand, the FCC in this decision stated that it was *not* considering the
15 facts and law I submitted to seek extensions and renewals of these Licenses, in the Havens 2016
16 Filing, except for selections that the FCC deemed to be my comments or statements that related
17 to the Receiver's applications at issue.

18 I believe that the FCC was mistaken under its rules and case precedents, to not consider
19 and rule upon all of the substantive factual and legal issues I presented in the Havens 2016
20 Filing, and I plan to submit a filing, the Havens 2017 Filing, under the requested Order under
21 this ex parte Application, to show why the FCC was mistaken and should, on reconsideration,
22 rule upon all that I submitted, and any relevant new factual and legal-argument material I may
23 also submit that arose after my filing just noted.

24 10. The FCC also stated in its decision that I was found in contempt of court for
25 submitting this Havens 2016 Filing. However, the FCC appears to have not been informed or to
26 not be aware that the Court of Appeal issued an Alternative Writ that found that the Havens
27 2016 Filing was not in contempt. A copy of the Alternative Writ is Exhibit 3: see footnote 1
28 above citing to relevant finding. *In my planned Havens 2017 Filing, I will show this mistake,*

1 and submit this as an *additional reason* that the FCC should now, on reconsideration, review
2 and full on all the facts and legal arguments in my Havens 2016 Filing (and any newly arisen
3 facts and law I may add in the Havens 2017 Filing).

4
5 I declare under penalty of perjury that the foregoing is true and correct.

6 Executed on December 19, 2017, at Berkeley, California.

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11 _____
12 Warren Havens
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**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
HELEN WONG-ARMIJO)	
)	
Applications for Waiver and Limited Extension of Time)	WT Docket No. 16-385
)	
FCR, INC.)	
)	
Applications for Waiver and Limited Extension of Time)	
)	
SKYBRIDGE SPECTRUM FOUNDATION)	
)	
TELESARUS HOLDINGS GB, LLC)	
)	
Applications for Waiver and Limited Extension of Time)	
)	

ORDER

Adopted: November 20, 2017

Released: November 20, 2017

By the Chief, Mobility Division, Wireless Telecommunications Bureau:

1. In this Order, we address the request for extension of time to comply with, and waiver of, the construction requirements for Multilateration Location and Monitoring Services (M-LMS) licenses filed by Helen Wong-Armijo (HWA),¹ and FCR, Inc. (FCR).² We also address the request for extension of the interim construction requirement for M-LMS licenses and waiver of the automatic termination provision filed jointly by Skybridge Spectrum Foundation (Skybridge) and Telesaurus Holdings GB, LLC (Telesaurus),³ acting through a court-appointed receiver (Receiver).⁴ For the reasons discussed below, we deny the Extension and Waiver Requests.

¹ Helen Wong-Armijo, Request for Extension of First Build-Out Date and Request for Waiver (filed Aug. 29, 2016) (HWA Interim Request); Helen Wong-Armijo, Request for Extension of Second Build-Out Date and Request for Waiver (filed Sept. 12, 2016) (HWA Final Request) (collectively, HWA Requests). See Appendix A for the related Universal Licensing System (ULS) file numbers and call signs.

² FCR, Inc., Request for Waiver and For Extension of First Build-Out Deadline (filed Aug. 31, 2016); FCR, Inc., Request for Waiver and For Extension of Second Build-Out Deadline (filed Sept. 12, 2016) (collectively, FCR Requests). See Appendix A for the related ULS file numbers and call signs.

³ Skybridge Spectrum Foundation and Telesaurus Holdings GB, LLC, Request for Extension of Time to Construct (filed Sept. 2, 2016) (Skybridge/Telesaurus Request). See Appendix A for the related ULS file numbers and call signs. We refer to the Skybridge/Telesaurus Request, the HWA Requests, and the FCR Requests collectively as the “Extension and Waiver Requests.”

I. BACKGROUND

2. *M-LMS Band.* In 1995, the Commission established M-LMS as a new service in the 902-928 MHz band with a hierarchy of spectrum usage rights.⁵ M-LMS systems use non-voice radio techniques to determine the location and status of mobile radio units. Specifically, this band is allocated on a primary basis to both Federal radiolocation systems and Industrial, Scientific, and Medical (ISM) equipment.⁶ Federal fixed and mobile services are allocated on a secondary basis to Federal radiolocation systems and ISM equipment. M-LMS licenses are allocated on a secondary basis to Federal users and to ISM devices and may not cause interference to and must tolerate interference from these users and devices.⁷ Amateur radio operations are allocated on a secondary basis to M-LMS.⁸ Finally, unlicensed devices are authorized under Part 15 to use the 902-928 MHz band, but such devices are not afforded interference protection rights and may not cause harmful interference to M-LMS licensees, amateur operations, or other licensed systems.⁹

3. The Commission auctioned M-LMS licenses in 1999 and 2001 (Auctions 21 and 39, respectively).¹⁰ M-LMS licenses are issued for a period of ten years.¹¹ Section 90.155 of the Commission's rules requires M-LMS licensees to construct and place into operation a sufficient number of base stations to provide M-LMS services to one-third of the license population within five years of the initial license grant (interim construction deadline), and two-thirds of the license population within ten years of the initial license grant (final construction deadline).¹²

(Continued from previous page) _____

⁴ See *Arnold Leong v. Warren Havens et al.*, Case No. 2002-070640, Order Appointing Receiver After Hearing and Preliminary Injunction (Nov. 16, 2015) (Receivership Order). The court appointed Susan L. Uecker as Receiver to take control and possession of several entities, including Skybridge and Telesaurus, and the licenses held by those entities. *Id.* at Attach. 1. On December 17, 2015, the Receiver filed involuntary transfer of control applications on behalf of these entities, notifying the Commission of the involuntary transfer of the licenses to Susan L. Uecker, Receiver; those applications were accepted in February 2016. See ULS File Nos. 0007061847 and 0007060898 (filed Dec. 17, 2015).

⁵ *Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems*, Report and Order, 10 FCC Rcd 4695 (1995). M-LMS licensees are regulated under Part 90 of the Commission's rules, which generally governs radio communications systems licensed and used in the Public Safety, Industrial/Business Radio Pool, and Radiolocation Radio Services, and may provide any service consistent with the Commission's rules and the licensee's regulatory status. See 47 CFR § 90.1 *et seq.*

⁶ 47 CFR §§ 2.106, 18.111(c), 18.301.

⁷ *Id.* § 90.353(a).

⁸ *Id.* § 97.301.

⁹ See *id.* § 90.361. However, users of Part 15 devices conforming to specified technical conditions are insulated from claims that such devices cause harmful interference to M-LMS systems in the 902-928 MHz band. *Id.*

¹⁰ See *Location and Monitoring Service Auction Closes, Winning Bidders in the Auction of 528 Multilateration Licenses in the Location and Monitoring Service*, Public Notice, 14 FCC Rcd 3754 (1999); *Public Coast and Location and Monitoring Service Spectrum Auction Closes, Winning Bidders Announced*, Public Notice, 16 FCC Rcd 12509 (2001).

¹¹ 47 CFR § 90.149(a).

¹² *Id.* § 90.155(d). M-LMS licensees also have the alternative option of demonstrating substantial service at the interim and final construction deadlines. *Id.*

4. *HWA Licenses.* HWA won its 84 M-LMS Channel Block B and C licenses in Auction 39 and the Commission granted the licenses to HWA in October 2001.¹³ The HWA licenses had an initial five-year interim construction deadline of October 5, 2006. On September 14, 2006, HWA filed a request for an extension of time to meet its interim construction deadline for all of its licenses.¹⁴ On January 31, 2007, the Mobility Division (Division) of the Wireless Telecommunications Bureau (Bureau) granted HWA a three-year extension of time, until October 5, 2009, to meet its interim construction deadline, finding that lack of available M-LMS equipment made construction impossible and complex spectrum sharing hindered the ability to secure such equipment, creating circumstances that warranted the requested relief.¹⁵

5. *FCR Licenses.* FCR won five M-LMS licenses in Auction 21, which the Commission granted in July 1999,¹⁶ and eight M-LMS licenses in Auction 39, which the Commission granted in October 2001.¹⁷ The five licenses acquired through Auction 21 had an initial five-year interim construction deadline of July 14, 2004, and the eight licenses acquired through Auction 39 had an initial five-year interim construction deadline of October 5, 2006. In 2004, FCR filed a request for a three-year extension of time to meet its interim construction deadline for the Auction 21 licenses,¹⁸ which the Division granted in 2005.¹⁹ In 2006 and 2007, respectively, FCR filed a request for a three-year extension of time to meet its interim construction deadline for the Auction 39 licenses and a request for an additional two-year extension to meet the interim construction deadline for the Auction 21 licenses.²⁰ For the same reasons stated above in granting HWA relief, the Division granted FCR's requests in the *2007 Extension Order*, extending the interim construction deadline for the Auction 21 licenses until July 14, 2009, and for the Auction 39 licenses until October 5, 2009.²¹ Because the extended interim construction deadline for the Auction 21 licenses coincided with the original ten-year final construction deadline for those licenses, the Division also granted FCR an additional two-year extension of the final construction deadline for the Auction 21 licenses until July 14, 2011.²²

¹³ See, e.g., ULS File No. 0000506502 (lead call sign WPTH955); see also *Wireless Telecommunications Bureau Grants 135 Location and Monitoring Service Licenses*, Public Notice, 16 FCC Rcd 17928, 17930-31 (WTB 2001) (*Auction 39 Grant*).

¹⁴ Request of Helen Wong-Armijo for Extension of First Build-Out Deadline, ULS File Nos. 0002751940-0002752023 (filed Sept. 14, 2006).

¹⁵ *Multilateration Location and Monitoring Services Construction Requirements*, Order on Reconsideration and Memorandum Opinion and Order, 22 FCC Rcd 1925, 1929, para. 17 (WTB MD 2007) (*2007 Extension Order*).

¹⁶ See, e.g., ULS File No. 0000007506 (lead call sign WPOJ871); see also *Wireless Telecommunications Bureau Grants 57 Location and Monitoring Services Licenses*, DA 99-1407, Public Notice, Attach. A (WTB July 16, 1999) (*Auction 21 Grant*).

¹⁷ See, e.g., ULS File No. 0000503101 (lead call sign WPTH901); see also *Auction 39 Grant*, 16 FCC Rcd at 17929.

¹⁸ See Requests of FCR, Inc. for Extension of First Buildout Deadline, ULS File Nos. 0001778449-0001778454 (filed June 18, 2004).

¹⁹ *Request for Extension of Five-Year Construction Requirement*, Letter Order, 20 FCC Rcd 4293, 4294 (WTB MD 2005) (extending the five-year construction deadline for call signs WPOJ871 through WPOJ875 to July 14, 2007).

²⁰ Requests of FCR, Inc. for Extension of First Buildout Deadline, ULS File Nos. 0002752062- 0002752069 (filed Sept. 14, 2006) (requesting the interim construction deadlines for call signs WPTH901 through WPTH908 be extended until October 5, 2009); Requests of FCR, Inc. for Extension of First Buildout Deadline, ULS File Nos. 0002882775-0002882779 (filed Jan. 18, 2007) (requesting the interim construction deadlines for call signs WPOJ871 through WPOJ875 be extended until July 14, 2009).

²¹ *2007 Extension Order*, 22 FCC Rcd at 1928-29, paras. 14-15.

²² *Id.* at 1929, para. 16.

6. *Skybridge/Telesaurus Licenses.* Warren Havens (Havens) won 52 M-LMS licenses in Auction 21, which the Commission granted in July 1999.²³ Telesaurus, a then Havens-controlled entity, won 77 M-LMS licenses in Auction 39, which the Commission granted to Telesaurus in October 2001²⁴ and March 2007.²⁵ The 52 licenses acquired through Auction 21 had an initial five-year interim construction deadline of July 14, 2004, and the 77 licenses acquired through Auction 39 had an initial five-year interim construction deadline of October 5, 2006. In 2003, Havens filed a waiver request seeking three additional years to meet the interim construction deadline for its Auction 21 licenses,²⁶ which the Division granted in 2004.²⁷ In March 2006, Havens assigned the 52 Auction 21 licenses to Telesaurus, making Telesaurus the licensee of 129 M-LMS licenses.²⁸ In October 2006, Telesaurus requested a three-year extension of time to meet the interim construction deadline for the Auction 39 licenses, which the Division granted in the *2007 Extension Order*, extending the interim deadline until October 5, 2009.²⁹ In that same Order, the Division granted Telesaurus an additional two-years for the Auction 21 licenses to meet both the interim and final construction deadlines, extending the deadlines until July 14, 2009 and July 14, 2011, respectively.³⁰ In November 2007, Telesaurus disaggregated 128 of its M-LMS licenses to Skybridge, another then Havens-controlled entity, resulting in Havens-controlled entities holding 257 total M-LMS licenses.³¹

7. *Band-Wide Commission Action.* On March 1, 2006, the Commission released a *Notice of Proposed Rulemaking*,³² initiating an examination of the rules governing the M-LMS band. Specifically, the Commission sought comment on whether to modify restrictions designed to limit the scope of M-LMS services,³³ power and other technical limitations,³⁴ spectrum aggregation limit,³⁵ “safe harbor” for

²³ See, e.g., ULS File No. 0000007386 (lead call sign WPOJ876); see also *Auction 21 Grant* at Attach. A.

²⁴ See, e.g., ULS File No. 0000506731 (lead call sign WPTH910); see also *Auction 39 Grant*, 16 FCC Rcd at 17930-31 (granting Telesaurus 43 licenses – call signs WPTH910 through WPTH953, except WPTH937).

²⁵ See, e.g., ULS File No. 0000506843 (lead call sign WQGN573); see also *Wireless Telecommunications Bureau Grants 36 VHF Public Coast and Location and Monitoring Services Licenses*, Public Notice, 22 FCC Rcd 4628 (WTB 2007) (granting Telesaurus 34 licenses – call signs WQGN573 through WQGN606). The Bureau was unable to grant 34 of the licenses Telesaurus won in Auction 39 until March 9, 2007 due to pending Tribal Land Bidding Credit review.

²⁶ See Request of Warren C. Havens for Partial Waiver of the Five-Year Construction Benchmark, ULS File Nos. 0001534267-0001534318 (filed Dec. 3, 2003). On July 14, 2004, Havens filed an Amended Request, in which he sought a three-year extension of the construction deadline. See Request for Partial Waiver, Amended Request, ULS File Nos. 0001807887-0001807938 (filed July 14, 2004).

²⁷ *Request of Warren C. Havens for Waiver of the Five-Year Construction Requirement for his Multilateration Location and Monitoring Service Economic Area Licenses*, Memorandum Opinion and Order, 19 FCC Rcd 23742 (WTB MD 2004) (extending the interim construction deadline until July 14, 2007).

²⁸ See ULS File No. 0002482348.

²⁹ *2007 Extension Order*, 22 FCC Rcd at 1929, para. 18.

³⁰ *Id.* at paras. 19-20.

³¹ See ULS File No. 0003134330. Telesaurus disaggregated each of its M-LMS licenses except for WQGN602. The 257 Havens controlled licenses are therefore comprised of: 1 original Telesaurus license, 128 disaggregated licenses retained by Telesaurus, and 128 disaggregated licenses assigned to Skybridge. The original Telesaurus license and the 128 disaggregated licenses assigned to Skybridge, as set forth in Appendix A, are the subject licenses of the Skybridge/Telesaurus Request.

³² *Amendment of the Commission's Part 90 Rules in the 904-909.75 and 919.75-928 MHz Bands*, Notice of Proposed Rulemaking, 21 FCC Rcd 2809 (2006) (*M-LMS NPRM*).

³³ *Id.* at 2816-19, paras. 19-25.

secondary operations,³⁶ and the requirement that M-LMS licensees demonstrate through actual field tests that their systems do not cause unacceptable levels of interference to Part 15 devices.³⁷

8. In November 2008, in response to further extension requests by certain M-LMS licensees, the Bureau granted the requests and, on its own motion, granted a waiver resulting in additional time for all M-LMS licensees to meet the construction requirements.³⁸ Specifically, the Bureau granted a waiver and extended the interim construction deadline to July 19, 2012 for licensees required to meet the interim requirement on or before July 19, 2012, and extended the final deadline to July 19, 2014, for any licensee required to meet that requirement on or before July 19, 2014.³⁹ The Bureau noted that there was no commercially available equipment certified for M-LMS use in the 900 MHz band.⁴⁰ Further, the Bureau acknowledged that the pending M-LMS rulemaking, initiated in 2006, engendered regulatory uncertainty for M-LMS licensees that may have contributed to a lack of M-LMS equipment development and service deployment.⁴¹ The Bureau indicated its extension of the respective interim and final construction deadlines afforded a reasonable amount of time to develop M-LMS operations.⁴²

9. In 2012 and 2014, each of the M-LMS licensees again filed requests for waiver of Section 90.155(d)⁴³ of the Commission's rules and further extensions of time to meet the interim and final construction deadlines.⁴⁴ The 2012 and 2014 Extension and Waiver Requests each claimed that relief was warranted given nothing had changed in the M-LMS market since the *2008 Extension Order*. The Requests argued that there was still no nonproprietary, commercially available equipment and no M-LMS licensee provided commercial service. Furthermore, licensees stated that because the rules remained unchanged, and the 2006 *M-LMS NPRM* remained pending, regulatory uncertainty over the M-LMS band still lingered and hindered licensees' ability to develop, construct, and deploy services in the band.

(Continued from previous page)

³⁴ *Id.* at 2818-21, paras. 26-33.

³⁵ *Id.* at 2821, paras. 34-35.

³⁶ *Id.* at 2822, paras. 36-38.

³⁷ *Id.* at 2823, paras. 39-40.

³⁸ *Requests of Progeny LMS, LLC and PCS Partners, L.P. for Waiver of Multilateration Location and Monitoring Service Construction Rules*, Order, 23 FCC Rcd 17250 (WTB 2008) (*2008 Extension Order*).

³⁹ *See id.* at 17250, para. 1.

⁴⁰ *Id.* at 17257, para. 22.

⁴¹ *Id.* at 17257-58, para. 22. *See also M-LMS NPRM*, 21 FCC Rcd 2809.

⁴² *2008 Extension Order*, 23 FCC Rcd at 17260, para. 30.

⁴³ 47 CFR § 90.155(d). As an alternative to the population coverage requirements, M-LMS licensees may make a showing of substantial service for its license at the five- and ten-year benchmarks. *Id.* Under Commission rules, an M-LMS license will automatically terminate as of the construction deadline if the licensee fails to meet the construction requirement. *See id.* §§ 1.946(c), 1.955(a)(2).

⁴⁴ *See, e.g.,* FCR, Inc. Request for Waiver and Extension of First Build-Out Deadline, ULS File No. 0005288407 (filed July 13, 2012); Helen Wong-Armijo Request for Waiver and Extension of First Build-Out Deadline, ULS File No. 0005288533 (filed July 11, 2012); Skybridge Spectrum Foundation Request for Extension of Time, ULS File No. 0005315615 (filed July 18, 2012); Telesaurus Holdings GB, LLC Request for Extension of Time, ULS File No. 0005315744 (filed July 18, 2012). In July 2014, Skybridge and Telesaurus filed separate requests seeking additional relief. *See e.g.,* Skybridge Waiver and Request for Extension of Time, ULS File No. 0006385481 (filed July 18, 2014); Telesaurus Further Supplement to Pending Extension Requests, Waiver and Request for Extension of Time, ULS File No. 0006393307 (filed July 18, 2014). PCS Partners, L.P. also filed waiver and extension requests in this proceeding that we omit here, and address only the requests of FCR, HWA, Skybridge, and Telesaurus filed in 2012 and 2014 (collectively, 2012 and 2014 Extension and Waiver Requests).

10. *2014 Termination Order*. On June 10, 2014, the Commission released an Order terminating the *M-LMS NPRM*, concluding that the various proposals for broad revisions of the applicable rules did not merit further consideration at that time.⁴⁵ The *2014 Termination Order* stated that based on the record in the proceeding, as well as recent developments in the M-LMS band, i.e., the ability of Progeny LMS, LLC (Progeny), one of the M-LMS licensees, to commence commercial operations,⁴⁶ the Commission believed the existing licensing framework provided M-LMS licensees with sufficient opportunities to provide service offerings.⁴⁷

11. *2014 Extension Order*. On August 29, 2014, we addressed the 2012 and 2014 Extension and Waiver Requests in a single Order.⁴⁸ We found that it was in the public interest to grant in part the requests for waiver of FCR, HWA, Skybridge, and Telesaurus, and therefore extended the interim construction deadline until September 4, 2016, and the final deadline until September 4, 2018.⁴⁹ In granting relief, we found it most significant that the Commission had terminated the *M-LMS NPRM* proceeding, thereby removing regulatory uncertainty for licensees.⁵⁰ We granted the limited extension in order to allow M-LMS licensees “to make appropriate business decisions regarding their M-LMS licenses, including deployment of services or, if necessary, to engage in secondary market transactions.”⁵¹ We also pointed out the numerous extensions of time over the course of the licenses’ history, and that previous justifications for such relief – regulatory uncertainty, lack of available equipment, and prior extensions being well in advance of the first license renewal deadline – no longer existed.⁵²

12. Significant to the matters at issue here, we stated in the *2014 Extension Order* that lack of available equipment would no longer be considered as a basis for further extensions.⁵³ We cautioned licensees that “[e]ven if the equipment market does not develop consistent with M-LMS licensees’ chosen business plans, licensees will nonetheless be subject to the construction requirements” established by that

⁴⁵ *Amendment of the Commission’s Part 90 Rules in the 904-909.75 and 919.75-928 Bands*, Order, 29 FCC Rcd 6361 (2014) (*2014 Termination Order*).

⁴⁶ In December 2011, the Bureau and the Office of Engineering and Technology (OET) jointly granted Progeny’s request for a waiver of two technical rules, conditioned on Progeny filing a field testing report prior to commencing commercial operation demonstrating that its M-LMS system would not cause unacceptable levels of interference to Part 15 devices that operate in the 902-928 MHz band. *See Request by Progeny LMS, LLC for Waiver of Certain Multilateration Location and Monitoring Service Rules*, Order, 26 FCC Rcd 16878 (WTB/OET 2011). In June 2013, the Commission adopted an Order allowing Progeny to commence commercial operations of its M-LMS network on Blocks B and C of its spectrum, subject to certain conditions. *See Request by Progeny LMS, LLC for Waiver of Certain Multilateration Location and Monitoring Service Rules*, Order, 28 FCC Rcd 8555 (2013).

⁴⁷ *2014 Termination Order*, 29 FCC Rcd at 6362, para. 8.

⁴⁸ *See Requests by FCR, Inc., Progeny LMS, LLC, PCS Partners, L.P. and Helen Wong-Armijo for Waiver and Limited Extension of Time; Requests by Skybridge Spectrum Foundation and Telesaurus Holdings GB, LLC for Waiver and Limited Extension of Time*, Order, 29 FCC Rcd 10361 (WTB MD 2014) (*2014 Extension Order*). In 2017, the Division denied PCS Partners’ and Havens’ request for reconsideration of the *2014 Extension Order*. *See PCS Partners, L.P., Applications for Waiver and Limited Extension of Time; Skybridge Spectrum Foundation and Telesaurus Holdings GB, LLC Applications for Waiver and Limited Extension of Time*, Order on Reconsideration, 32 FCC Rcd 556 (WTB MD 2017) (*2017 M-LMS Order on Recon*), *apps. for review pending*.

⁴⁹ *2014 Extension Order*, 29 FCC Rcd at 10367, para. 16.

⁵⁰ *Id.* at para. 17.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.* at 10368, para. 18.

Order.⁵⁴ We found this approach consistent with the purpose of the construction requirements and the Commission's obligation to ensure that licensees effectively utilize spectrum, and that granting extension requests in perpetuity where no build-out requirements have been met would be contrary to the public interest.⁵⁵ HWA and FCR did not challenge this ruling. In response to petitions for reconsideration, including that filed jointly by Skybridge and Telesaurus, however, we affirmed these points,⁵⁶ and our holdings in the *2014 Extension Order* explicitly anticipated the scenario presented in all the requests for relief here, i.e., that equipment consistent with these licensees' business plans may not become available, and stated that alone would not justify supplying yet more time.

13. *2017 Progeny Extension Order*. On January 17, 2017, we conditionally granted Progeny's request for rule waiver to extend applicable construction deadlines for its B and C Block licenses.⁵⁷ We found that "a number of factors, taken collectively, justify relief in the public interest, provided that the conditions [that we] specified are adhered to."⁵⁸ First, such relief would facilitate Progeny's provision of service to wireless carriers to enable them to meet the Enhanced 911 location accuracy deadlines the Commission adopted in the *Indoor Location Accuracy Order*⁵⁹ to address a critical public safety need for improving indoor location accuracy.⁶⁰ Second, rather than seek further relief based on speculative business plans, Progeny constructed its initial position location network after designing and contracting for custom manufactured M-LMS transmitters in a spectrum band where equipment had not to date been available.⁶¹ Third, Progeny began test operations on a network comprised of hundreds of beacons in 39 of its 40 largest Economic Areas (EAs).⁶² Finally, after successful testing, Progeny commenced actual operations in those top 40 EAs.⁶³

14. Extension and Waiver Requests. FCR, HWA, and Skybridge and Telesaurus jointly, have each asked for an extension of time to meet the M-LMS construction deadlines established in the *2014 Extension Order* and waiver of various rules concerning those requirements.

15. *HWA and FCR Extension and Waiver Requests*. On August 29, 2016, HWA filed applications requesting an extension of its interim construction deadline for its 84 M-LMS licenses, and on September 12, 2016, filed applications requesting an extension of the final construction deadline.⁶⁴ Specifically, HWA seeks to extend both the interim and final construction deadlines to October 5, 2021, the expiration date of the licenses.⁶⁵ In the alternative, the HWA Requests seek a waiver of Section

⁵⁴ *Id.* at para. 17.

⁵⁵ *2014 Extension Order*, 29 FCC Rcd at 10368, para. 18.

⁵⁶ *2017 M-LMS Order on Recon*, 32 FCC Rcd at 562-64, paras. 18-22.

⁵⁷ *Request of Progeny LMS, LLC for Waiver and Limited Extension of Time*, Order, 32 FCC Rcd 122 (WTB MD 2017) (*2017 Progeny Extension Order*).

⁵⁸ *Id.*

⁵⁹ See *Wireless E911 Location Accuracy Requirements*, Fourth Report and Order, 30 FCC Rcd 1259 (2015) (*Indoor Location Accuracy Order*).

⁶⁰ See *2017 Progeny Extension Order*, 32 FCC Rcd at 136, para. 28.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ See generally HWA Requests.

⁶⁵ HWA Interim Request at 1; HWA Final Request at 1. In effect, by requesting that the interim construction deadline be moved to the license expiration date, HWA seeks a complete waiver of the interim construction requirement.

90.155(d) of the Commission's rules establishing construction requirements, which, if granted, would result in complete removal of the obligation to comply with construction benchmarks.⁶⁶

16. On August 31, 2016, FCR filed applications seeking a waiver of Section 90.155(d) of the Commission's rules establishing construction requirements with respect to its interim construction deadline for its 13 M-LMS licenses, and on September 12, 2016 filed applications seeking waiver of Section 90.155(d) with respect to the final construction deadline, which, if granted, would result in complete removal of the obligation to comply with construction benchmarks.⁶⁷ In the alternative, the FCR Requests seek an extension of its construction deadlines.⁶⁸ Similar to HWA's request, FCR seeks to extend both the interim and final construction deadlines to the respective expiration dates of its 13 licenses, which range from July 2019 to October 2021.⁶⁹

17. HWA and FCR argue that they have been unable to meet the construction requirements due to the lack of commercially available equipment for operation in the M-LMS band, creating circumstances beyond their control that justify an extension and waiver of the construction rules.⁷⁰ HWA and FCR claim that, despite our statement in the *2014 Extension Order* that certain licensees were able to commence operations within the existing M-LMS rules, nothing has changed in the equipment market and no commercially available equipment exists that is ready for deployment by licensees.⁷¹ HWA and FCR claim that given the "unique" circumstances of the M-LMS band, the Commission should extend the buildout requirements and allow the M-LMS equipment market to develop until the expiration dates of the licenses.⁷²

18. Pursuant to the Commission's waiver standard,⁷³ HWA and FCR also argue that the underlying purpose of the buildout requirement would not be served by its application in this case, and that strict adherence to the rule would be inequitable, unduly burdensome, and contrary to public interest.⁷⁴ In support of their argument, HWA and FCR claim that while the underlying purpose of the construction requirements is to avoid spectrum warehousing and encourage deployment, M-LMS licensees are in a unique situation compared to licensees in other bands.⁷⁵ The lack of available equipment and the unwillingness of manufacturers to develop "new spread-spectrum equipment with an apparent limited market," HWA and FCR claim, make it impossible for licensees to put the spectrum to use.⁷⁶ Additionally, while acknowledging Progeny's ability to develop equipment capable of operating within M-LMS restrictions, the parties state that it would nevertheless be unduly burdensome to require licensees to similarly spend millions of dollars to develop equipment for operation in the band.⁷⁷ Instead,

⁶⁶ HWA Interim Request at 9; HWA Final Request at 7. *See also* 47 CFR § 90.155(d).

⁶⁷ *See generally* FCR Requests.

⁶⁸ FCR Requests at 6.

⁶⁹ FCR's licenses WPOJ871 through WPOJ875 expire on July 14, 2019; WPTH901 through WPTH908 expire on October 5, 2021. As with the HWA Requests, by requesting that the interim construction deadline be moved to the license expiration date, FCR in effect seeks a complete waiver of the interim construction requirement.

⁷⁰ HWA Interim Request at 1-2, 8-9; HWA Final Request at 1, 7; FCR Requests at 2.

⁷¹ HWA Interim Request at 8; HWA Final Request at 6-7; FCR Requests at 3-4.

⁷² HWA Interim Request at 10; HWA Final Request at 9; FCR Requests at 5-6.

⁷³ 47 CFR § 1.925(b)(3).

⁷⁴ HWA Interim Request at 9; HWA Final Request at 7; FCR Requests at 4.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ HWA Interim Request at 10; HWA Final Request at 8; FCR Requests at 5.

HWA and FCR argue that it is in the public interest to “dispense with the first and second build-out requirements, allow the market to develop, and examine the situation when the license renewal application is filed.”⁷⁸

19. *Skybridge/Telesaurus Extension and Waiver Request*. On September 2, 2016, Skybridge and Telesaurus, acting through a court-appointed receiver, jointly filed applications for extension of the construction deadlines for Skybridge’s 128 M-LMS licenses and one Telesaurus license.⁷⁹ Skybridge and Telesaurus jointly request an extension of the interim construction deadline until September 4, 2018.⁸⁰ In the alternative, Skybridge and Telesaurus seek an extended timeframe for construction, if that relief is granted to PCS Partners, L.P. in response to its separate request for extension and waiver filed on April 15, 2016.⁸¹ Additionally, Skybridge and Telesaurus request waiver of the Commission’s rule providing for automatic termination of license authorization where a licensee fails to meet construction requirements.⁸² On March 16, 2017, the Receiver filed an application to assign to Progeny the Telesaurus license – Call Sign WQGN602 – that is the subject of the Skybridge/Telesaurus Request.⁸³ On the same day, the Receiver filed an amendment to the Skybridge/Telesaurus Request to extend the interim construction deadline for WQGN602 until April 3, 2020, which would coincide with the relief granted to Progeny in the *2017 Progeny Extension Order*.⁸⁴

20. In its request on behalf of Skybridge and Telesaurus, the Receiver claims that ongoing litigation involving the previous licensee, the terms of the court-mandated receivership, and the resulting hindrances to the Receiver’s discharge of her responsibilities constitute unique and challenging circumstances beyond the Receiver’s control that justify an extension of the interim buildout requirement

⁷⁸ HWA Interim Request at 10; HWA Final Request at 9; FCR Requests at 6.

⁷⁹ See generally Skybridge/Telesaurus Request.

⁸⁰ While Skybridge/Telesaurus do not specify this date in the Request, the requested extension date is reflected in the application on ULS. See ULS File Nos. 0007441599 *et seq.*

⁸¹ PCS Partners, L.P., Petition for Waiver of 47 CFR §90.353(b), and Request for Extension of Time and for Expedited Treatment, ULS File No. 0007232513 (filed Apr. 15, 2016) (seeking a waiver of Section 90.353(b) of the Commission’s rules to permit machine type communications and requesting to extend its midterm and final construction requirements for thirty-one Channel Block A M-LMS licenses and one Channel Block C M-LMS license to 2020 and 2022, respectively). On May 4, 2016, the Bureau sought comment on PCS Partners’ request. See *Wireless Telecommunications Bureau Seeks Comment on PCS Partners Requests for Multilateration Location and Monitoring Service Waiver and Construction Extension*, Public Notice, 31 FCC Rcd 4408 (WTB 2016). The comment period ended on June 3, 2016, and PCS Partners’ applications and requests for relief remain pending.

⁸² Skybridge/Telesaurus Request at 8. The Skybridge/Telesaurus Request cites Section 90.155(a) in reference to the “automatic cancellation provision” for which it seeks the waiver. Section 90.155(a) provides for cancellation of site-based licenses, where licensees fail to put their licenses into operation within 12 months of authorization. However, although Section 90.155(d) details the specific construction and coverage requirements for geographic area-based M-LMS licenses, the penalty for failure to meet those requirements is governed by Section 1.946. Under Section 1.946(c), licensees that fail to meet service or operation requirements by the construction deadline will terminate automatically. 47 CFR § 1.946(c). We will interpret the Skybridge/Telesaurus Request as intending to request waiver of the applicable automatic termination provision, Section 1.946(c), and consider the requested relief pursuant to that rule.

⁸³ See Telesaurus and Progeny Application for Assignment of Authorization, ULS File No. 0007701965 (filed Mar. 16, 2017) (Telesaurus Assignment Application).

⁸⁴ See Telesaurus Amendment to Request for Waiver and Extension of Construction Deadline, ULS File No. 0007441729 (filed Mar. 16, 2017) (Telesaurus Extension and Waiver Amendment). Telesaurus’ license under call sign WQGN602 has an expiration date of March 9, 2017, and the Receiver timely filed a renewal application. See Telesaurus Request for Renewal, ULS File No. 0007694217 (filed Mar. 9, 2017) (Telesaurus Renewal).

and waiver of the automatic termination provision.⁸⁵ According to the request, the Receiver has worked diligently “to pursue strategic transactions that would put the licenses into service,” but has been diverted due to Havens’ ongoing legal challenges concerning the licenses and the receivership itself.⁸⁶ Citing to Bureau action in another receivership case,⁸⁷ the Receiver argues that relief is warranted where a former controlling owner’s interference and lack of cooperation prevent a court-appointed receiver from carrying out her duties and “taking actions necessary to preserve FCC licenses.”⁸⁸ The Receiver asserts she was also hindered in her pursuit of “strategic transactions” by the restrictions of the receivership itself, claiming she did not have the ability to market *all* of the M-LMS licenses together until July 11, 2016.⁸⁹ These developments, the Receiver claims, are “unquestionably unique circumstances, which were out of the Receiver’s control,” and therefore warrant an extension of the buildout requirements.⁹⁰

21. In support of its request for extension and waiver, the Receiver argues that a grant of the requested relief is in the public interest and that strict application of the construction and automatic cancellation provisions would frustrate the purpose of the rules.⁹¹ According to the request, it is consistent with Commission precedent to permit a “temporary relaxation of construction deadlines where a short window of time would facilitate buildout or voluntary license sales and help achieve the Commission’s licensing goals.”⁹² In addition to facilitating transactions to sell the licenses, the Receiver states the requested extension and waiver would have the additional public policy purpose of “honoring the Receiver’s duty to the state court” to preserve the companies and assets under her control.⁹³ The Receiver urges the Commission not to “value its formal procedural rules over the receiver’s obligations, or allow those rules to prevent a voluntary transfer that places a license in the hands of a responsible licensee.”⁹⁴ Regarding the Telesaurus license that it seeks to assign to Progeny, the Receiver argues there

⁸⁵ 47 CFR § 1.946(c).

⁸⁶ Skybridge/Telesaurus Request at 1-2.

⁸⁷ *William M. Holland Conditional, Limited Request for Waivers, Applications for Involuntary Assignment, Applications for Renewal, Order and Order on Reconsideration*, 31 FCC Rcd 3920 (WTB MD and WTB BD 2016) (*Holland*) (granting a waiver of the requirement that renewal applications be filed on or before the license expiration date where the prior owner, against court orders, refused to provide the receiver with the information necessary to timely file renewal applications, and granting temporary waiver of construction and operation requirements to permit the licensee to bring licenses back into operation status).

⁸⁸ Skybridge/Telesaurus Request at 7.

⁸⁹ *Id.* at 3-4, 9 (emphasis added). The Receivership Order authorized the Receiver to “do all the things, and incur the risks and obligations, ordinarily done or incurred by owners, managers, and operators of businesses and property similar to that possessed by the receiver; *except* the receiver shall not make any capital improvements to the property without prior court approval.” Receivership Order at 2, para. 14(c) (emphasis in original). In February 2016, the Receiver requested and the court granted authority to sell all M-LMS licenses with construction deadlines in 2016. *See Arnold Leong v. Warren Havens et al.*, Case No. 2002-070640, Order Instructing Receiver Regarding Certain Spectrum Licenses with Renewal, Construction, or Substantial Service Deadlines in 2016 (Feb. 26, 2016). In July 2016, the Receiver requested and the court granted authority to market and propose for sale all licenses held by any of the receivership entities. *See Arnold Leong v. Warren Havens et al.*, Case No. 2002-070640, Order Instructing Receiver Regarding Marketing and Sale of Spectrum Licenses (July 11, 2016) (July 2016 Instructions).

⁹⁰ Skybridge/Telesaurus Request at 9-10.

⁹¹ *Id.* at 8. The Receiver also requests waiver under the Commission’s more general standard, which provides for waiver only for good cause shown. *See* 47 CFR § 1.3.

⁹² Skybridge/Telesaurus Request at 10 (citing *Request of Daniel R. Goodman, Receiver, for Waiver and Extension*, Memorandum Opinion and Order and Order on Reconsideration, 13 FCC Rcd 21944 (1998)).

⁹³ *Id.* at 7.

⁹⁴ *Id.* (citing *LaRose v. FCC*, 494 F.2d 1145, 1148-49 (D.C. Cir. 1974)).

is good cause to extend the construction deadlines because Progeny will use the license to provide indoor location accuracy service.⁹⁵ Finally, the Receiver argues that a brief extension to allow her to “carry out existing plans for putting the frequency into use” is consistent with the *2014 Extension Order* and the Commission’s interest in encouraging rapid deployment of service in the M-LMS band.⁹⁶

22. *Comments and Replies.* On November 30, 2016, the Bureau placed the Extension and Waiver Requests on public notice for comment.⁹⁷ Of the eight commenting parties, five directly oppose the Extension and Waiver Requests.⁹⁸ The Receiver, HWA, and FCR filed in reply to the opposition.⁹⁹ Prior to the public notice, Havens filed a pleading in ULS for certain Skybridge and Telesaurus call signs, also requesting extension and waiver for the Skybridge and Telesaurus licenses involved in the instant case.¹⁰⁰ We treat the Havens filing as a comment (Havens Comment) and consider it only to the extent that it addresses the merits of the Skybridge/Telesaurus Request.

23. Commenters filing in opposition to the Extension and Waiver Requests argue that a grant of the requested relief would be contrary to the public interest, as it would encourage owners of licensed but unused spectrum to disregard their license requirements.¹⁰¹ Given the previous extensions granted to M-LMS licensees and especially with regard to requests based on lack of available equipment, commenters urged us to act consistently with the *2014 Extension Order* and deny the extensions.¹⁰² A few

⁹⁵ Telesaurus Extension and Waiver Amendment at 1-2.

⁹⁶ Skybridge/Telesaurus Request at 11.

⁹⁷ *Wireless Telecommunications Bureau Seeks Comment on Helen Wong-Armijo, FCR, Inc., Skybridge Spectrum Foundation, and Telesaurus Holdings GB LLC, Requests for Multilateration Location and Monitoring Service Waiver and Construction Extensions*, Public Notice, 31 FCC Rcd 12450 (WTB 2016).

⁹⁸ See Inovonics Wireless Corp. Comments (filed Nov. 29, 2016) (Inovonics Comments); Itron, Inc. Comments (filed Nov. 30, 2016) (Itron Comments); Landis+Gyr Technology, Inc. Comments (filed Nov. 30, 2016) (L+G Comments); Wireless Internet Service Providers Association Comments (filed Nov. 30, 2016) (WISPA Comments); Public Knowledge and Open Technology Institute at New America Reply Comments (filed Dec. 12, 2016) (PK/OTI Reply).

⁹⁹ See HWA and FCR Reply (filed Dec. 9, 2016) (HWA/FCR Reply); Skybridge and Telesaurus *Ex Parte* (filed Dec. 13, 2016) (Skybridge/Telesaurus *Ex Parte*). The Skybridge/Telesaurus *Ex Parte* was filed after the close of the reply comment period. We include it in the record here in the interest of full information and consideration of the matters at issue and treat it as an *ex parte* communication pursuant to Section 1.1200 of the Commission’s *ex parte* rules. 47 CFR § 1.1200 *et seq.*

¹⁰⁰ Havens filed this pleading in ULS on call signs WQHU548 (Skybridge lead call sign) and WQGN602 (Telesaurus), as a “conditional submission for protective purposes,” requesting an extension and waiver of the construction requirements, pending the outcome of ongoing litigation concerning the receivership. See, e.g., ULS Attachments Page for Call Sign WQHU548. The Receivership Order prohibited Havens from acting on behalf of any of the receivership entities; “[i]nterfering in any way with the substitution of the Receiver as the individual responsible for the management of the FCC Licenses and Receivership Entities;” and from “[c]ommunicating with the FCC regarding the FCC Licenses or the Receivership Entities.” Receivership Order at 5, para. 28(d). The Havens pleading, filed on September 2, 2016, formed the basis in part of an Alameda County Superior Court Order finding Havens in contempt of court for violating the Receivership Order. See *Arnold Leong v. Warren Havens et al.*, Case No. 2002-070640, Order Holding Warren Havens in Contempt for Failure to Comply with Court Orders (Dec. 14, 2016).

¹⁰¹ Itron Comments at 2; PK/OTI Reply at 2; WISPA Comments at 10; Inovonics Comments at 2. The Receiver refutes this position, arguing that it is in the public interest to allow the Receiver a short window to sell the licenses rather than “holding those licenses hostage from potential buyers even longer while the Commission goes through the process of cancelling them and re-auctioning the underlying spectrum.” Skybridge/Telesaurus *Ex Parte* at 3.

¹⁰² L+G Comments at 3; Inovonics Comments at 3; WISPA Comments at 6, 10; PK/OTI Reply at 2.

commenters claim that denying the extensions will have the added benefit of providing regulatory certainty to “hundreds of millions of Part 15 devices presently deployed in the 902-928 MHz band.”¹⁰³

II. DISCUSSION

24. *Standard of Review.* Licensees may request an extension of time to construct pursuant to Section 1.946(e)¹⁰⁴ or Section 90.155(g),¹⁰⁵ or a waiver of the construction requirement under Section 1.925.¹⁰⁶ The Commission may grant an extension of time under Section 1.946(e) where the licensee demonstrates that the failure to complete construction is due to causes beyond its control,¹⁰⁷ or under Section 90.155(g) where the failure to commence operation is due to causes beyond its control.¹⁰⁸ Both rules specify types of circumstances that will not meet this requirement.¹⁰⁹ The Commission may grant a request for a waiver when: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and a grant of the requested waiver would be in the public interest; or (ii) in view of the unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.¹¹⁰ Under Section 1.3, the Commission may also grant waivers where good cause is shown.¹¹¹ As with other Commission rules, requests to waive a construction requirement must “meet a high hurdle at the starting gate.”¹¹² While each case must be determined in light of its specific circumstances, the Commission’s construction rules are intended to ensure intensive use of valuable spectrum.¹¹³ Waiver of those requirements is infrequent, and it is only appropriate when consistent with that goal and the public interest.¹¹⁴ We further observe that it is a licensee’s responsibility to confirm that it can satisfy construction and service requirements in advance of acquiring spectrum, a fact of which we routinely remind licensees prior to auctioning licenses.¹¹⁵

¹⁰³ Inovonics Comments at 3. *See also* Itron Comments at 2, L+G Comments at 2. HWA and FCR refute these positions as “groundless” given existing protections for Part 15 users, and state all other issues raised by the commenters are “fully addressed” in their filed requests and “need not be repeated.” HWA/FCR Reply at 2.

¹⁰⁴ 47 CFR § 1.946(e).

¹⁰⁵ *Id.* § 90.155(g).

¹⁰⁶ *Id.* § 1.925.

¹⁰⁷ *Id.* § 1.946(e)(1).

¹⁰⁸ *Id.* § 90.155(g).

¹⁰⁹ *Id.* (“No extensions will be granted for delays caused by lack of financing, lack of site availability, for the assignment or transfer of control of an authorization, or for failure to timely order equipment.”). *See also id.* § 1.946(e)(2)-(3) (describing similar circumstances with respect to construction requirements).

¹¹⁰ 47 CFR § 1.925(b)(3).

¹¹¹ *Id.* § 1.3.

¹¹² *WAIT Radio v. FCC*, 459 F.2d 1203, 1207 (D.C. Cir. 1972).

¹¹³ *See* 47 U.S.C. § 309(j)(3)(D). *Cf. id.* § 309(j)(4)(B).

¹¹⁴ *See WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff’d*, 459 F.2d 1203 (1972), *cert. denied*, 93 S. Ct. 461 (1972).

¹¹⁵ *See, e.g., VHF Public Coast and Location and Monitoring Service Spectrum Auction Scheduled for June 6, 2001, Notice and Filing Requirements for 16 Licenses in the VHF Public Coast and 241 Licenses in the Location and Monitoring Service Auction, Minimum Opening Bids, Upfront Payments and Other Procedural Issues*, Public Notice, 16 FCC Rcd 6986, 6993-95 (WTB 2001) (establishing procedures for Auction 39); *Auction of Location and Monitoring Service Licenses, Auction Notice and Filing Requirements for 528 Multilateration Licenses Scheduled*

(continued....)

25. *Discussion.* After review of the record and for the reasons discussed below, we do not find that a further extension or a waiver of the construction deadlines is warranted. We therefore deny the Extension and Waiver Requests and, pursuant to Section 1.946(c) of the Commission's rules, the HWA, FCR, Skybridge, and Telesaurus licenses set forth in Appendix A automatically terminated as of September 4, 2016.¹¹⁶

26. *HWA/FCR Extension and Waiver Requests.* As discussed above, HWA and FCR argue that lack of commercially available equipment is a circumstance beyond the licensees' control that caused their failure to meet the construction requirements and therefore warrant either an extension or a waiver of the rules.¹¹⁷ However, in light of the *2014 Extension Order* and the underlying purpose of the construction requirements and our obligation to ensure that licensees effectively utilize spectrum,¹¹⁸ we find that HWA and FCR fail to meet the extension and waiver standards and that: (1) a grant of the requested relief would frustrate the purpose of the rules and would be contrary to the public interest; and (2) there are neither unique nor unusual factual circumstances of the instant case such that application of the construction rule would be inequitable, unduly burdensome or contrary to the public interest, or that HWA and FCR had no reasonable alternative.

27. In the *2014 Extension Order*, we cautioned M-LMS licensees that we would not consider future requests for waiver or extension of either the interim or final construction deadline based on claims related to lack of equipment.¹¹⁹ HWA and FCR do not make any claims of circumstances beyond their control warranting an extension other than the lack of available equipment in the M-LMS market. Rather, HWA and FCR argue that the Bureau was mistaken when it stated that equipment capable of operating in the M-LMS band existed in 2014, and maintain that the equipment limitations persist in the M-LMS band.¹²⁰ To the extent they rely on such arguments, these requests amount essentially to an untimely petition for reconsideration of the *2014 Extension Order* and in any event, are unpersuasive because we expressly disclaimed that reason as a basis for granting the relief there or in the future and affirmed that posture as to petitions for reconsideration filed by Skybridge and Telesaurus, among others.¹²¹ Moreover, we stated specifically in the *2014 Extension Order* that our decision did not rely on the then-current state of equipment development.¹²² HWA and FCR were on notice that even if the equipment market did not develop consistent with their business plans, the licenses would nonetheless be subject to the September 4, 2016 and September 4, 2018 construction deadlines.¹²³ Given the numerous previous extensions granted to M-LMS licensees, the fact that the licenses were then already beyond their initial renewal deadline, and the removal of regulatory uncertainty following the Commission's issuance of the *2014 Termination Order*, we specifically stated that, without new or unique circumstances, there would no longer be justification for granting further extension requests where our buildout requirements had not

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for December 15, 1998, *Minimum Opening Bids and Other Procedural Issues*, Public Notice, 13 FCC Rcd 18583, *3-5 (WTB 1998) (establishing procedures for Auction 21).

¹¹⁶ 47 CFR § 1.946(c).

¹¹⁷ HWA Interim Request at 1-2; HWA Final Request at 1; FCR Requests at 2.

¹¹⁸ See generally 47 CFR § 0.131.

¹¹⁹ *2014 Extension Order*, 29 FCC Rcd at 10368, para. 18.

¹²⁰ HWA Interim Request at 8-9; HWA Final Request at 6-7; FCR Requests at 3-4.

¹²¹ As to Skybridge and Telesaurus, the proper forum for addressing these types of arguments, to the extent not done herein, is in that separate proceeding, for which Applications for Review are pending.

¹²² *2014 Extension Order*, 29 FCC Rcd at 10367, para. 17.

¹²³ *Id.* at 10368, para. 17.

been met.¹²⁴ Therefore, consistent with the *2014 Extension Order*, and in the absence of new or unique circumstances, we find that HWA and FCR have failed to meet the standard for grant of an extension.

28. We are also not persuaded by HWA and FCR's argument that it would be unduly burdensome to require HWA and FCR to make the necessary financial investments to develop equipment capable of operating in the M-LMS band. This argument is especially unpersuasive, without anything more, given that HWA and FCR were on notice that additional relief would not be forthcoming even if equipment were not available consistent with their business plans and, where at least one other licensee has developed equipment capable of operating in this band,¹²⁵ HWA and FCR nonetheless failed to demonstrate that they have met the construction requirement or taken concrete steps towards that end. We reiterate that a Commission license does not constitute a guarantee of business success, and the Commission routinely cautions applicants of their responsibility to perform individual due diligence as they would with any new business venture, prior to participating in an auction.¹²⁶ HWA and FCR were on notice of the technical requirements and interference restrictions placed on operations in the 902-928 MHz frequency band. In the more than 17 years since the initial auction of the M-LMS licenses, neither party has been able to put the spectrum to use. HWA and FCR have not made any showing that a waiver of the construction requirements would facilitate deployment of services in the M-LMS band; indeed, the core of their argument is that there is no prospect for the development of equipment capable of operating in the M-LMS band. Despite acknowledging Progeny's equipment development efforts in this same band, HWA and FCR continued to make the business decision not to invest in developing equipment capable of operating in the M-LMS band. Thus, it would not serve the underlying purpose of the construction requirements to grant another waiver of our rules. As we stated in the *2014 Extension Order*, it would be contrary to the public interest to grant extensions and waivers in perpetuity where our buildout requirements have not been met and there is no assurance that they will ever be met.¹²⁷ We therefore find that HWA and FCR have failed to meet the standard for grant of a waiver.

29. *Skybridge/Telesaurus Extension and Waiver Request.* As an initial procedural matter, we reject Havens' view that, because certain proceedings forming in part the basis for the receivership remain pending with the Commission, in considering the merits of the extension requests, we must preserve the rights and interests of the eventual licensee – Havens – pending the resolution of those proceedings.¹²⁸ First, as stated above, Havens is not the licensee; a court appointed the Receiver to take control and possession of Skybridge and Telesaurus and the licenses held by those entities.¹²⁹ Second, the argument that we must look to the diligence and interests of Havens as the eventual licensee is purely speculative; Havens presumes that the pending litigation over the receivership will be resolved in his favor and the licenses ultimately returned to his control. Irrespective of the disposition of license ownership pending litigation, we will consider the Receiver's properly filed extension request along with all other facts in the record relevant to our decision. Therefore, contrary to Havens' claims, the Sippel Order and "license-protection receivership" are not interlocutory for the purposes of this matter such that our ability to act is

¹²⁴ *Id.* at 10367-68, paras. 15-19.

¹²⁵ *See supra* para. 13.

¹²⁶ *See supra* note 115.

¹²⁷ *Cf. 2014 Extension Order*, 29 FCC Rcd at 10368, para. 17.

¹²⁸ Havens Comment at 4. *See also Maritime Communications/Land Mobile, LLC*, EB Docket No. 11-71, FCC 15M-14, Memorandum Opinion and Order, 2015 WL 1890837 (ALJ 2015) (Sippel Order) (finding that Havens filed a Motion for Summary Decision in bad faith and engaged in contemptuous and egregious conduct during the proceedings), *petition for reconsideration pending, ENL-VSL Interlocutory Appeal as of Right*, EB Docket No. 11-71, Appeal (filed Apr. 29, 2015).

¹²⁹ *See supra* note 4.

restrained.¹³⁰ Accordingly, we find the Skybridge/Telesaurus Request is both factually and procedurally ripe for resolution, and reiterate that we consider the Havens Comment only to the extent that it is relevant to the merits of the Skybridge/Telesaurus Request.¹³¹

30. As discussed above, the Receiver argues that ongoing litigation and various resulting hindrances to the Receiver's discharge of her responsibilities as to the receivership constitute unique and challenging circumstances beyond the Receiver's control that justify granting either an extension of the construction deadline or a waiver of the automatic termination provision where a licensee fails to meet coverage requirements.¹³² We note at the outset that the Receiver must have shown that circumstances beyond her control prevented the timely construction, not the mere sale, of the licenses. However, we find that neither the circumstances of the receivership nor the pre-receivership license history¹³³ warrant an extension of the construction deadlines and that a waiver of the automatic termination provision would frustrate the purpose of the rules and would be contrary to the public interest.

31. The Skybridge/Telesaurus Request is based on difficulties caused by the transfer of the licenses into receivership and the ensuing litigation, and requests additional time for the purpose of pursuing transactions for the sale of the licenses. The Commission's rules explicitly state that extension requests will not be granted for failure to meet a construction deadline solely because the licensee undergoes a transfer of control or because the licensee intends to assign the authorization.¹³⁴ Nonetheless, the Skybridge/Telesaurus Request looks to the *2014 Extension Order* in support of its extension request, noting the Division offered a brief period for the licenses to "make appropriate business decisions regarding their M-LMS licenses, including deployment of services or, if necessary, *to engage in secondary market transactions.*"¹³⁵ Citing to *Goodman*,¹³⁶ the Receiver argues that a brief further

¹³⁰ Regardless of past, present, or future control of the Skybridge/Telesaurus licenses, our decision today is based on whether the facts and circumstances of the record before us warrant the requested relief. *See supra* paras. 6-12, and *infra* paras. 30-34.

¹³¹ *See* Havens Comment at 6-10 (referencing and incorporating several filings and matters already before the Commission concerning both Skybridge/Telesaurus and other Havens-controlled entities, many of which are no longer active proceedings). We similarly find that we need not consider the merits of the specific extension Havens proposes, which differs from the Skybridge/Telesaurus requested relief. *See id.* at 2 (requesting an "extension of (i) the length of time from when the court granted the . . . receivership to 24 months past the termination of the receivership (a date not yet known), with allowance to request a further extension at the end of that period if . . . during the receivership, a subject License is sold...").

¹³² Skybridge/Telesaurus Request at 8.

¹³³ Havens requests that the Bureau look to the plans and due diligence of the pre-receivership licensees in making its decision to grant or deny an extension. *See* Havens Comment at 4. While pre-receivership due diligence might be one of several factors in determining whether relief is warranted, the Havens Comment fails to point to any such claims of pre-receivership due diligence that the Skybridge/Telesaurus Request failed to raise, or that were not already addressed in the *2014 Extension Order*.

¹³⁴ 47 CFR §§ 1.946(e)(3), 90.155(g). The mere fact that the Receiver has entered an agreement for the sale of the Telesaurus license to Progeny, without a showing that circumstances beyond the licensee's control prevented it from executing a sale that would result in timely construction, is therefore unavailing as a basis for grant of an extension.

¹³⁵ *2014 Extension Order*, 29 FCC Rcd at 10367, para. 17 (emphasis added). *See also* Skybridge/Telesaurus Request at 11. Rather than renewed requests based on lack of available equipment, the Receiver argues the Skybridge/Telesaurus Request is consistent with the Bureau's stated interests, as it seeks only a brief period of additional time to execute secondary market transactions for the sale of the M-LMS licenses. *Id.*

¹³⁶ *Daniel R. Goodman, Receiver*, Memorandum Opinion and Order, 10 FCC Rcd 8537, 8545 (1995); *Daniel R. Goodman, Receiver*, Memorandum Opinion and Order and Order on Reconsideration, 13 FCC Rcd 21944, 21973 (1998).

extension for Skybridge and Telesaurus would allow the licenses to realize the benefit of that relief granted in 2014.¹³⁷ Following the amendment of Commission rules to provide a one year construction deadline for future licensees in a certain 800 MHz band category, the Commission created parity in *Goodman* by waiving its rules to extend by four months the prior eight-month construction deadline applicable to existing licensees.¹³⁸ This is distinguishable from the instant case, where Skybridge and Telesaurus (regardless of license control) and all other parties subject to the *2014 Extension Order* have already had the benefit of the additional two years granted in 2014 and substantial previous M-LMS relief. Moreover, we are not persuaded that further relief is warranted solely because the entities were placed into receivership after the 2014 extension grant. In addition to the fact that plans for the assignment of licenses cannot, and did not in 2014, form the sole basis for grant of an extension absent other factors warranting such relief, the Receiver has failed to demonstrate that any circumstances beyond the licensees' control denied Skybridge and Telesaurus equal benefit of the previous relief granted to M-LMS licensees.

32. We also find unpersuasive the Receiver's argument that her efforts to pursue transactions for the sale of the licenses were impeded by both the receivership limitations on her authority to market and sell the licenses and wrongful interference by Havens' "frivolous" litigation.¹³⁹ First, the conditions of the receivership did not prohibit the Receiver from marketing the licenses for sale or lease; it required only that the Receiver obtain "prior approval" from the court before executing such sale or lease.¹⁴⁰ The Receiver claims she did not receive authority to market and sell all of the licenses together – i.e., the Skybridge/Telesaurus licenses with buildout deadlines in 2016 as well as the remaining disaggregated Telesaurus licenses – until July 2016, and that prior to then she believed the unavailability of complementary licenses would hinder the market for the Skybridge licenses.¹⁴¹ However, it is the role of the Receiver, not the court, to request and obtain such authority.¹⁴² As the court clarified in its July 2016 Order, the Receiver remained at all times authorized to market and propose for sale any licenses held by the receivership entities prior to seeking court approval for the finality of those transactions.¹⁴³ This is evidenced by the fact that the Receiver filed its application to assign to Progeny license WQGN602 with the Commission on March 16, 2017, over a month prior to filing a motion in the Alameda County Court for approval of the sale.¹⁴⁴ Furthermore, the Receiver's business decision to delay sale of the licenses until all of the licenses could be marketed together cannot form the basis of an extension due to "circumstances beyond its control."¹⁴⁵ Despite the Receiver's reliance on *LaRose*¹⁴⁶ for the argument that

¹³⁷ Skybridge/Telesaurus Request at 11.

¹³⁸ *Goodman*, 13 FCC Rcd at 21973.

¹³⁹ Skybridge/Telesaurus Request at 3-4.

¹⁴⁰ See Receivership Order at 2, para. 14(c) (requiring the Receiver to obtain prior court approval before making "any capital improvements to the property").

¹⁴¹ Skybridge/Telesaurus Request at 4.

¹⁴² See Receivership Order at 2, para. 16 ("The receiver and the parties may at any time apply to this court for further instructions and orders for additional powers necessary to enable the receiver to perform the receiver's duties properly.").

¹⁴³ July 2016 Instructions at 2, paras. 2, 4.

¹⁴⁴ See Telesaurus Assignment Application at 1 (filed Mar. 16, 2017 seeking to assign the license to Progeny); *Arnold Leong v. Warren Havens et al.*, Case No. 2002-070640, Motion for an Order Approving Sale of Wireless Spectrum Assets to Progeny LMS, LLC (filed Apr. 26, 2017). In fact, as early as March 9, 2017, the Receiver represented to the Commission that Telesaurus and Progeny had mutually agreed to and signed a Spectrum Purchase Agreement. See Telesaurus Renewal at 1.

¹⁴⁵ 47 CFR §§ 1.946(e), 90.155(g).

“the Commission should not value its formal procedures over the Receiver’s obligations, or allow those rules to prevent a voluntary transfer” of the licenses,¹⁴⁷ nothing in the Commission’s rules or procedures prevented the Receiver from carrying out her duties. After taking control of the Skybridge and Telesaurus licenses, the Receiver faced no impediments under the Commission’s rules or procedures as a result of the receivership that would have prevented her from timely constructing or assigning the licenses to a party to construct prior to the construction deadline. The Receiver has therefore failed to demonstrate that these were obstacles to her ability to discharge her responsibilities under the receivership that prevented Skybridge and Telesaurus from meeting the construction requirements or timely executing the sale of the licenses prior to the construction deadline.

33. Furthermore, the Receiver’s reliance on *Holland*¹⁴⁸ for the proposition that Havens’ ongoing litigation against the receivership constitutes “improper interference with the receiver’s work” is misplaced. In *Holland*, the Division granted a limited extension to give the receiver time to bring certain previously constructed licenses back into operation where the former controlling entity, against court orders, refused to execute powers of attorney or turn over other information necessary for the receiver to file assignment and renewal applications.¹⁴⁹ In contrast, while the litigation may have made it more difficult to manage the M-LMS licenses, the Skybridge/Telesaurus Request fails to demonstrate that Havens withheld any authorizations or information, or that he improperly interfered with the Receiver’s duties such that she was factually prevented from either constructing under the licenses or seeking to assign the licenses.¹⁵⁰ Indeed, the Skybridge/Telesaurus Request makes no showing of the specific “strategic transactions” the Receiver would have entered into prior to the construction deadline but-for Havens’ legal actions, nor does it give any concrete examples of how an extension would remove those impediments and facilitate such transactions. While the Receiver seeks to assign one Telesaurus license to Progeny, that application was not filed until nearly six months after the construction deadline and the Telesaurus Extension and Waiver Amendment makes no showing that the conditions of the receivership prevented the Receiver from executing that sale prior to the construction deadline. Furthermore, approval of the assignment here would require grant of the Receiver’s amended request, which seeks substantially more extensive relief than originally requested, by asking that the construction deadlines for the Telesaurus license be extended to coincide with the extended deadlines granted to Progeny in the *2017 Progeny Extension Order*.¹⁵¹ Because we find unpersuasive the Receiver’s argument that she was improperly prevented from executing a sale of the licenses resulting in timely construction prior to the construction deadline, we similarly find that the requested relief accompanying the application for assignment of the Telesaurus license is not warranted. The Receiver has therefore failed to demonstrate that circumstances beyond the licensee’s control prevented it from executing a sale that would result in

(Continued from previous page)

¹⁴⁶ *LaRose v. FCC*, 494 F.2d 1145 (D.C. Cir. 1974).

¹⁴⁷ Skybridge/Telesaurus Request at 7-8.

¹⁴⁸ *Holland*, 31 FCC Rcd 3920.

¹⁴⁹ *Id.* at 3923-25, paras. 11-12, 17.

¹⁵⁰ The Receiver’s interference claims make showings only of practical infeasibility, rather than legal impossibility. *See, e.g.*, Skybridge/Telesaurus Request at 4 (“Havens has deployed great energy and determination to oppose the Receiver, who has had to devote similar energy to fending off Havens’ persistent attempts to undermine the court-imposed receivership by initiating frivolous litigations. That diversion of energy has meant that her full attention could not be given to the Skybridge and Telesaurus LMS licenses.”). *See also* WISPA Comments at 9 (“[T]he Receiver here seeks a waiver of a construction and operational requirement that has been in place for many years. The Receiver does not, and cannot, claim that [Havens’] actions have precluded the filing of the Applications or any renewal applications.”).

¹⁵¹ Telesaurus Extension and Waiver Amendment at 2 (seeking a single consolidated construction deadline of April 20, 2017).

timely construction of the license. For this reason and the reasons stated above, we therefore deny the request for an extension of time and dismiss the application for assignment of the Telesaurus license to Progeny.

34. We similarly find that the Skybridge/Telesaurus Request fails to meet the standard for waiver of our rules providing for automatic termination where a licensee fails to meet construction requirements.¹⁵² As discussed above, after granting further extensions to M-LMS licensees in the *2014 Extension Order*, we stated that in the future it would no longer be consistent with the purpose of our rules or in the public interest to grant extension and waiver requests in perpetuity where our buildout requirements have not been met.¹⁵³ The Commission's construction obligations serve the important purpose of ensuring that scarce spectrum resources are put to use and deployed in a manner that serves all communities.¹⁵⁴ Irrespective of license ownership and control, for over 17 years Skybridge and Telesaurus have been unable to timely put the spectrum to use. Neither the Skybridge/Telesaurus Request nor the Havens Comment persuade us that further relief is warranted. We find it against the public interest and contrary to the plain language and underlying purpose of our rules to grant Skybridge and Telesaurus a waiver based on largely speculative plans to sell the licenses substantially beyond the already extended construction deadlines. We reject the argument that the receivership and its attendant duties constitute a unique or unusual circumstance resulting in failure to meet the construction requirements such that relief might be warranted, and therefore find that Skybridge and Telesaurus have failed to meet the standard for either Section 1.925 or 1.3 of the Commission's rules and deny the Skybridge/Telesaurus Request.

35. In conclusion, for the reasons discussed above, we deny the requests of both HWA and FCR for an extension of time pursuant to Section 1.946(e) and Section 90.155(g) and their requests for a waiver of the construction requirements contained in Section 90.155(d). We also deny the Skybridge/Telesaurus Request, as amended, for an extension of time pursuant to Section 1.946(e) and Section 90.155(g) and their request for waiver of Section 1.946(c).

III. ORDERING CLAUSES

36. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Sections 1.925(b)(3), 1.946(e), and 90.155(d) of the Commission's rules, 47 C.F.R. §§ 1.925(b)(3), 1.946(e), 90.155(d), the requests of Helen Wong-Armijo, filed on August 29, 2016, for extension and waiver of the interim construction deadline, and on September 12, 2016, for extension and waiver of the final construction deadline, as set forth in Appendix A, ARE DENIED.

37. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Sections 1.925(b)(3), 1.946(e), and 90.155(d) of the Commission's rules, 47 C.F.R. §§ 1.925(b)(3), 1.946(e), 90.155(d), the requests of FCR, Inc., filed on August 31, 2016, for extension and waiver of the interim construction deadline, and on September 12, 2016, for extension and waiver of the final construction deadline, as set forth in Appendix A, ARE DENIED.

38. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Sections 1.3, 1.925(b)(3), 1.946(e), and 90.155(d) of the Commission's rules, 47 C.F.R. §§ 1.3, 1.925(b)(3), 1.946(e), 90.155(d), the requests of Skybridge

¹⁵² 47 CFR §§ 1.925(b)(3), 1.946(c).

¹⁵³ See *supra* paras. 11-12.

¹⁵⁴ See, e.g., 47 U.S.C. § 309.

Spectrum Foundation and Telesaurus Holdings GB, LLC, filed on September 2, 2016, for extension of the interim construction deadline and waiver of the automatic termination provision, as set forth in Appendix A, ARE DENIED.

39. ACCORDINGLY, pursuant to Section 1.946(c) of the Commission's rules, 47 C.F.R. § 1.946(c), the Helen Wong-Armijo, FCR, Inc., Skybridge Spectrum Foundation, and Telesaurus Holdings GB, LLC licenses set forth in Appendix A automatically terminated as of September 4, 2016.

40. IT IS FURTHER ORDERED that the applications of Skybridge Spectrum Foundation, filed on March 9, 2017, for renewal of licenses WQHU643 through WQHU675, and of Telesaurus Holdings GB, LLC, filed on March 9, 2017, for renewal of license WQGN602, and of Telesaurus Holdings GB, LLC and Progeny LMS, LLC, filed on March 16, 2017, for assignment of license WQGN602, as set forth in Appendix A, ARE DISMISSED as moot.

41. These actions are taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Roger S. Noel
Chief, Mobility Division
Wireless Telecommunications Bureau

APPENDIX A

Helen Wong-Armijo Licenses:

File Number	Call Sign	Purpose	Receipt Date	Radio Service Code	Channel Block	Market Name
0007435092	WPTH955	Extension of First Deadline	8/29/2016	LS	C	Salisbury, MD-DE-VA
0007450628	WPTH955	Extension of Second Deadline	9/12/2016	LS	C	Salisbury, MD-DE-VA
0007435093	WPTH956	Extension of First Deadline	8/29/2016	LS	C	Staunton, VA-WV
0007450629	WPTH956	Extension of Second Deadline	9/12/2016	LS	C	Staunton, VA-WV
0007435094	WPTH957	Extension of First Deadline	8/29/2016	LS	B	Fayetteville, NC
0007450630	WPTH957	Extension of Second Deadline	9/12/2016	LS	B	Fayetteville, NC
0007435095	WPTH958	Extension of First Deadline	8/29/2016	LS	C	Fayetteville, NC
0007450631	WPTH958	Extension of Second Deadline	9/12/2016	LS	C	Fayetteville, NC
0007435096	WPTH959	Extension of First Deadline	8/29/2016	LS	B	Dothan, AL-FL-GA
0007450632	WPTH959	Extension of Second Deadline	9/12/2016	LS	B	Dothan, AL-FL-GA
0007435097	WPTH960	Extension of First Deadline	8/29/2016	LS	C	Dothan, AL-FL-GA
0007450633	WPTH960	Extension of Second Deadline	9/12/2016	LS	C	Dothan, AL-FL-GA
0007435098	WPTH961	Extension of First Deadline	8/29/2016	LS	B	Albany, GA
0007450634	WPTH961	Extension of Second Deadline	9/12/2016	LS	B	Albany, GA
0007435099	WPTH962	Extension of First Deadline	8/29/2016	LS	C	Albany, GA
0007450635	WPTH962	Extension of Second Deadline	9/12/2016	LS	C	Albany, GA

0007435100	WPTH963	Extension of First Deadline	8/29/2016	LS	B	Columbus, GA-AL
0007450636	WPTH963	Extension of Second Deadline	9/12/2016	LS	B	Columbus, GA-AL
0007435101	WPTH964	Extension of First Deadline	8/29/2016	LS	C	Columbus, GA-AL
0007450637	WPTH964	Extension of Second Deadline	9/12/2016	LS	C	Columbus, GA-AL
0007435102	WPTH965	Extension of First Deadline	8/29/2016	LS	B	Asheville, NC
0007450638	WPTH965	Extension of Second Deadline	9/12/2016	LS	B	Asheville, NC
0007435103	WPTH966	Extension of First Deadline	8/29/2016	LS	C	Asheville, NC
0007450639	WPTH966	Extension of Second Deadline	9/12/2016	LS	C	Asheville, NC
0007435104	WPTH967	Extension of First Deadline	8/29/2016	LS	B	Hickory-Morganton, NC-TN
0007450640	WPTH967	Extension of Second Deadline	9/12/2016	LS	B	Hickory-Morganton, NC-TN
0007435105	WPTH968	Extension of First Deadline	8/29/2016	LS	C	Hickory-Morganton, NC-TN
0007450641	WPTH968	Extension of Second Deadline	9/12/2016	LS	C	Hickory-Morganton, NC-TN
0007435106	WPTH969	Extension of First Deadline	8/29/2016	LS	B	Wheeling, WV-OH
0007450642	WPTH969	Extension of Second Deadline	9/12/2016	LS	B	Wheeling, WV-OH
0007435107	WPTH970	Extension of First Deadline	8/29/2016	LS	C	Wheeling, WV-OH
0007450643	WPTH970	Extension of Second Deadline	9/12/2016	LS	C	Wheeling, WV-OH
0007435108	WPTH971	Extension of First Deadline	8/29/2016	LS	C	Northern Michigan, MI
0007450644	WPTH971	Extension of Second Deadline	9/12/2016	LS	C	Northern Michigan, MI

0007435109	WPTH972	Extension of First Deadline	8/29/2016	LS	B	Appleton-Oshkosh-Neenah, WI
0007450645	WPTH972	Extension of Second Deadline	9/12/2016	LS	B	Appleton-Oshkosh-Neenah, WI
0007435110	WPTH973	Extension of First Deadline	8/29/2016	LS	C	Appleton-Oshkosh-Neenah, WI
0007450646	WPTH973	Extension of Second Deadline	9/12/2016	LS	C	Appleton-Oshkosh-Neenah, WI
0007435111	WPTH974	Extension of First Deadline	8/29/2016	LS	C	Traverse City, MI
0007450647	WPTH974	Extension of Second Deadline	9/12/2016	LS	C	Traverse City, MI
0007435112	WPTH975	Extension of First Deadline	8/29/2016	LS	C	Paducah, KY-IL
0007450648	WPTH975	Extension of Second Deadline	9/12/2016	LS	C	Paducah, KY-IL
0007435113	WPTH976	Extension of First Deadline	8/29/2016	LS	C	Greenville, MS
0007450649	WPTH976	Extension of Second Deadline	9/12/2016	LS	C	Greenville, MS
0007435114	WPTH977	Extension of First Deadline	8/29/2016	LS	B	Montgomery, AL
0007450650	WPTH977	Extension of Second Deadline	9/12/2016	LS	B	Montgomery, AL
0007435115	WPTH978	Extension of First Deadline	8/29/2016	LS	C	Montgomery, AL
0007450651	WPTH978	Extension of Second Deadline	9/12/2016	LS	C	Montgomery, AL
0007435116	WPTH979	Extension of First Deadline	8/29/2016	LS	B	Biloxi-Gulfport-Pascagoula, MS
0007450652	WPTH979	Extension of Second Deadline	9/12/2016	LS	B	Biloxi-Gulfport-Pascagoula, MS
0007435117	WPTH980	Extension of First Deadline	8/29/2016	LS	C	Biloxi-Gulfport-Pascagoula, MS
0007450653	WPTH980	Extension of Second Deadline	9/12/2016	LS	C	Biloxi-Gulfport-Pascagoula, MS

0007435118	WPTH981	Extension of First Deadline	8/29/2016	LS	B	Beaumont-Port Arthur, TX
0007450654	WPTH981	Extension of Second Deadline	9/12/2016	LS	B	Beaumont-Port Arthur, TX
0007435119	WPTH982	Extension of First Deadline	8/29/2016	LS	C	Beaumont-Port Arthur, TX
0007450655	WPTH982	Extension of Second Deadline	9/12/2016	LS	C	Beaumont-Port Arthur, TX
0007435120	WPTH983	Extension of First Deadline	8/29/2016	LS	B	Monroe, LA
0007450656	WPTH983	Extension of Second Deadline	9/12/2016	LS	B	Monroe, LA
0007435121	WPTH984	Extension of First Deadline	8/29/2016	LS	C	Monroe, LA
0007450657	WPTH984	Extension of Second Deadline	9/12/2016	LS	C	Monroe, LA
0007435122	WPTH985	Extension of First Deadline	8/29/2016	LS	C	Fort Smith, AR-OK
0007450658	WPTH985	Extension of Second Deadline	9/12/2016	LS	C	Fort Smith, AR-OK
0007435123	WPTH986	Extension of First Deadline	8/29/2016	LS	C	Fayetteville-Springdale-Rogers
0007450659	WPTH986	Extension of Second Deadline	9/12/2016	LS	C	Fayetteville-Springdale-Rogers
0007435124	WPTH987	Extension of First Deadline	8/29/2016	LS	C	Joplin, MO-KS-OK
0007450660	WPTH987	Extension of Second Deadline	9/12/2016	LS	C	Joplin, MO-KS-OK
0007435125	WPTH988	Extension of First Deadline	8/29/2016	LS	C	Jonesboro, AR-MO
0007450661	WPTH988	Extension of Second Deadline	9/12/2016	LS	C	Jonesboro, AR-MO
0007435126	WPTH989	Extension of First Deadline	8/29/2016	LS	B	Springfield, IL-MO
0007450662	WPTH989	Extension of Second Deadline	9/12/2016	LS	B	Springfield, IL-MO

0007435127	WPTH990	Extension of First Deadline	8/29/2016	LS	C	Springfield, IL-MO
0007450663	WPTH990	Extension of Second Deadline	9/12/2016	LS	C	Springfield, IL-MO
0007435128	WPTH991	Extension of First Deadline	8/29/2016	LS	C	Columbia, MO
0007450664	WPTH991	Extension of Second Deadline	9/12/2016	LS	C	Columbia, MO
0007435129	WPTH992	Extension of First Deadline	8/29/2016	LS	C	Cedar Rapids, IA
0007450665	WPTH992	Extension of Second Deadline	9/12/2016	LS	C	Cedar Rapids, IA
0007435130	WPTH993	Extension of First Deadline	8/29/2016	LS	C	La Crosse, WI-MN
0007450666	WPTH993	Extension of Second Deadline	9/12/2016	LS	C	La Crosse, WI-MN
0007435131	WPTH994	Extension of First Deadline	8/29/2016	LS	C	Rochester, MN-IA-WI
0007450667	WPTH994	Extension of Second Deadline	9/12/2016	LS	C	Rochester, MN-IA-WI
0007435132	WPTH995	Extension of First Deadline	8/29/2016	LS	B	Wausau, WI
0007450668	WPTH995	Extension of Second Deadline	9/12/2016	LS	B	Wausau, WI
0007435133	WPTH996	Extension of First Deadline	8/29/2016	LS	C	Wausau, WI
0007450669	WPTH996	Extension of Second Deadline	9/12/2016	LS	C	Wausau, WI
0007435134	WPTH997	Extension of First Deadline	8/29/2016	LS	B	Duluth-Superior, MN-WI
0007450670	WPTH997	Extension of Second Deadline	9/12/2016	LS	B	Duluth-Superior, MN-WI
0007435135	WPTH998	Extension of First Deadline	8/29/2016	LS	C	Duluth-Superior, MN-WI
0007450671	WPTH998	Extension of Second Deadline	9/12/2016	LS	C	Duluth-Superior, MN-WI

0007435136	WPTH999	Extension of First Deadline	8/29/2016	LS	C	Grand Forks, ND-MN
0007450672	WPTH999	Extension of Second Deadline	9/12/2016	LS	C	Grand Forks, ND-MN
0007435137	WPTI200	Extension of First Deadline	8/29/2016	LS	C	Minot, ND
0007450673	WPTI200	Extension of Second Deadline	9/12/2016	LS	C	Minot, ND
0007435138	WPTI201	Extension of First Deadline	8/29/2016	LS	C	Bismarck, ND-MT-SD
0007450674	WPTI201	Extension of Second Deadline	9/12/2016	LS	C	Bismarck, ND-MT-SD
0007435139	WPTI202	Extension of First Deadline	8/29/2016	LS	C	Fargo-Moorhead, ND-MN
0007450675	WPTI202	Extension of Second Deadline	9/12/2016	LS	C	Fargo-Moorhead, ND-MN
0007435140	WPTI203	Extension of First Deadline	8/29/2016	LS	C	Aberdeen, SD
0007450676	WPTI203	Extension of Second Deadline	9/12/2016	LS	C	Aberdeen, SD
0007435141	WPTI204	Extension of First Deadline	8/29/2016	LS	C	Rapid City, SD-MT-ND-NE
0007450677	WPTI204	Extension of Second Deadline	9/12/2016	LS	C	Rapid City, SD-MT-ND-NE
0007435142	WPTI205	Extension of First Deadline	8/29/2016	LS	C	Sioux City, IA-NE-SD
0007450678	WPTI205	Extension of Second Deadline	9/12/2016	LS	C	Sioux City, IA-NE-SD
0007435143	WPTI206	Extension of First Deadline	8/29/2016	LS	B	Lincoln, NE
0007450679	WPTI206	Extension of Second Deadline	9/12/2016	LS	B	Lincoln, NE
0007435144	WPTI207	Extension of First Deadline	8/29/2016	LS	C	Lincoln, NE
0007450680	WPTI207	Extension of Second Deadline	9/12/2016	LS	C	Lincoln, NE

0007435145	WPTI208	Extension of First Deadline	8/29/2016	LS	C	Grand Island, NE
0007450681	WPTI208	Extension of Second Deadline	9/12/2016	LS	C	Grand Island, NE
0007435146	WPTI209	Extension of First Deadline	8/29/2016	LS	C	North Platte, NE-CO
0007450682	WPTI209	Extension of Second Deadline	9/12/2016	LS	C	North Platte, NE-CO
0007435147	WPTI210	Extension of First Deadline	8/29/2016	LS	B	Topeka, KS
0007450683	WPTI210	Extension of Second Deadline	9/12/2016	LS	B	Topeka, KS
0007435148	WPTI211	Extension of First Deadline	8/29/2016	LS	C	Topeka, KS
0007450684	WPTI211	Extension of Second Deadline	9/12/2016	LS	C	Topeka, KS
0007435149	WPTI212	Extension of First Deadline	8/29/2016	LS	C	Western Oklahoma, OK
0007450685	WPTI212	Extension of Second Deadline	9/12/2016	LS	C	Western Oklahoma, OK
0007435150	WPTI213	Extension of First Deadline	8/29/2016	LS	C	Abilene, TX
0007450686	WPTI213	Extension of Second Deadline	9/12/2016	LS	C	Abilene, TX
0007435151	WPTI214	Extension of First Deadline	8/29/2016	LS	C	San Angelo, TX
0007450687	WPTI214	Extension of Second Deadline	9/12/2016	LS	C	San Angelo, TX
0007435152	WPTI215	Extension of First Deadline	8/29/2016	LS	B	Odessa-Midland, TX
0007450688	WPTI215	Extension of Second Deadline	9/12/2016	LS	B	Odessa-Midland, TX
0007435153	WPTI216	Extension of First Deadline	8/29/2016	LS	C	Odessa-Midland, TX
0007450689	WPTI216	Extension of Second Deadline	9/12/2016	LS	C	Odessa-Midland, TX

0007435154	WPTI217	Extension of First Deadline	8/29/2016	LS	C	Hobbs, NM-TX
0007450690	WPTI217	Extension of Second Deadline	9/12/2016	LS	C	Hobbs, NM-TX
0007435155	WPTI218	Extension of First Deadline	8/29/2016	LS	B	Lubbock, TX
0007450691	WPTI218	Extension of Second Deadline	9/12/2016	LS	B	Lubbock, TX
0007435156	WPTI219	Extension of First Deadline	8/29/2016	LS	C	Lubbock, TX
0007450692	WPTI219	Extension of Second Deadline	9/12/2016	LS	C	Lubbock, TX
0007435157	WPTI220	Extension of First Deadline	8/29/2016	LS	B	Amarillo, TX-NM
0007450693	WPTI220	Extension of Second Deadline	9/12/2016	LS	B	Amarillo, TX-NM
0007435158	WPTI221	Extension of First Deadline	8/29/2016	LS	C	Amarillo, TX-NM
0007450694	WPTI221	Extension of Second Deadline	9/12/2016	LS	C	Amarillo, TX-NM
0007435159	WPTI222	Extension of First Deadline	8/29/2016	LS	C	Santa Fe, NM
0007450695	WPTI222	Extension of Second Deadline	9/12/2016	LS	C	Santa Fe, NM
0007435160	WPTI223	Extension of First Deadline	8/29/2016	LS	C	Pueblo, CO-NM
0007450696	WPTI223	Extension of Second Deadline	9/12/2016	LS	C	Pueblo, CO-NM
0007435161	WPTI224	Extension of First Deadline	8/29/2016	LS	C	Scottsbluff, NE-WY
0007450697	WPTI224	Extension of Second Deadline	9/12/2016	LS	C	Scottsbluff, NE-WY
0007435162	WPTI225	Extension of First Deadline	8/29/2016	LS	B	Casper, WY-ID-UT
0007450698	WPTI225	Extension of Second Deadline	9/12/2016	LS	B	Casper, WY-ID-UT

0007435163	WPTI226	Extension of First Deadline	8/29/2016	LS	C	Casper, WY-ID-UT
0007450699	WPTI226	Extension of Second Deadline	9/12/2016	LS	C	Casper, WY-ID-UT
0007435164	WPTI227	Extension of First Deadline	8/29/2016	LS	B	Billings, MT-WY
0007450700	WPTI227	Extension of Second Deadline	9/12/2016	LS	B	Billings, MT-WY
0007435165	WPTI228	Extension of First Deadline	8/29/2016	LS	C	Billings, MT-WY
0007450701	WPTI228	Extension of Second Deadline	9/12/2016	LS	C	Billings, MT-WY
0007435166	WPTI229	Extension of First Deadline	8/29/2016	LS	C	Great Falls, MT
0007450702	WPTI229	Extension of Second Deadline	9/12/2016	LS	C	Great Falls, MT
0007435167	WPTI230	Extension of First Deadline	8/29/2016	LS	C	Missoula, MT
0007450703	WPTI230	Extension of Second Deadline	9/12/2016	LS	C	Missoula, MT
0007435168	WPTI231	Extension of First Deadline	8/29/2016	LS	C	Idaho Falls, ID-WY
0007450704	WPTI231	Extension of Second Deadline	9/12/2016	LS	C	Idaho Falls, ID-WY
0007435169	WPTI232	Extension of First Deadline	8/29/2016	LS	C	Twin Falls, ID
0007450705	WPTI232	Extension of Second Deadline	9/12/2016	LS	C	Twin Falls, ID
0007435170	WPTI233	Extension of First Deadline	8/29/2016	LS	B	Flagstaff, AZ-UT
0007450706	WPTI233	Extension of Second Deadline	9/12/2016	LS	B	Flagstaff, AZ-UT
0007435171	WPTI234	Extension of First Deadline	8/29/2016	LS	C	Flagstaff, AZ-UT
0007450707	WPTI234	Extension of Second Deadline	9/12/2016	LS	C	Flagstaff, AZ-UT

0007435172	WPTI235	Extension of First Deadline	8/29/2016	LS	C	Farmington, NM-CO
0007450708	WPTI235	Extension of Second Deadline	9/12/2016	LS	C	Farmington, NM-CO
0007435173	WPTI236	Extension of First Deadline	8/29/2016	LS	B	Redding, CA-OR
0007450709	WPTI236	Extension of Second Deadline	9/12/2016	LS	B	Redding, CA-OR
0007435174	WPTI237	Extension of First Deadline	8/29/2016	LS	C	Redding, CA-OR
0007450710	WPTI237	Extension of Second Deadline	9/12/2016	LS	C	Redding, CA-OR
0007435175	WPTI238	Extension of First Deadline	8/29/2016	LS	C	Pendleton, OR-WA
0007450711	WPTI238	Extension of Second Deadline	9/12/2016	LS	C	Pendleton, OR-WA

FCR, Inc. Licenses:

File Number	Call Sign	Purpose	Receipt Date	Radio Service Code	Channel Block	Market Name
0007438931	WPOJ871	Extension of First Deadline	8/31/2016	LS	A	Buffalo-Niagara Falls, NY-PA
0007450762	WPOJ871	Extension of Second Deadline	9/12/2016	LS	A	Buffalo-Niagara Falls, NY-PA
0007438932	WPOJ872	Extension of First Deadline	8/31/2016	LS	A	Tampa-St. Petersburg-Clearwater
0007450763	WPOJ872	Extension of Second Deadline	9/12/2016	LS	A	Tampa-St. Petersburg-Clearwater
0007438933	WPOJ873	Extension of First Deadline	8/31/2016	LS	A	Atlanta, GA-AL-NC
0007450764	WPOJ873	Extension of Second Deadline	9/12/2016	LS	A	Atlanta, GA-AL-NC
0007438934	WPOJ874	Extension of First Deadline	8/31/2016	LS	A	Cleveland-Akron, OH-PA

0007450765	WPOJ874	Extension of Second Deadline	9/12/2016	LS	A	Cleveland-Akron, OH-PA
0007438935	WPOJ875	Extension of First Deadline	8/31/2016	LS	A	Las Vegas, NV-AZ-UT
0007450766	WPOJ875	Extension of Second Deadline	9/12/2016	LS	A	Las Vegas, NV-AZ-UT
0007438976	WPTH901	Extension of First Deadline	8/31/2016	LS	A	Bangor, ME
0007450792	WPTH901	Extension of Second Deadline	9/12/2016	LS	A	Bangor, ME
0007438977	WPTH902	Extension of First Deadline	8/31/2016	LS	A	Portland, ME
0007450793	WPTH902	Extension of Second Deadline	9/12/2016	LS	A	Portland, ME
0007438978	WPTH903	Extension of First Deadline	8/31/2016	LS	A	Johnson City-Kingsport-Bristol
0007450794	WPTH903	Extension of Second Deadline	9/12/2016	LS	A	Johnson City-Kingsport-Bristol
0007438979	WPTH904	Extension of First Deadline	8/31/2016	LS	A	Charleston, WV-KY-OH
0007450795	WPTH904	Extension of Second Deadline	9/12/2016	LS	A	Charleston, WV-KY-OH
0007438980	WPTH905	Extension of First Deadline	8/31/2016	LS	A	Wheeling, WV-OH
0007450796	WPTH905	Extension of Second Deadline	9/12/2016	LS	A	Wheeling, WV-OH
0007438981	WPTH906	Extension of First Deadline	8/31/2016	LS	A	Erie, PA
0007450797	WPTH906	Extension of Second Deadline	9/12/2016	LS	A	Erie, PA
0007438982	WPTH907	Extension of First Deadline	8/31/2016	LS	A	Traverse City, MI
0007450798	WPTH907	Extension of Second Deadline	9/12/2016	LS	A	Traverse City, MI
0007438983	WPTH908	Extension of First Deadline	8/31/2016	LS	A	Grand Rapids-Muskegon-Holland

0007450799	WPTH908	Extension of Second Deadline	9/12/2016	LS	A	Grand Rapids-Muskegon-Holland
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Skybridge Spectrum Foundation Licenses:

File Number	Call Sign	Purpose	Receipt Date	Radio Service Code	Channel Block	Market Name
0007441599	WQHU548	Extension of First Deadline	9/2/2016	LS	A	Boston-Worcester-Lawrence-Lowe
0007441600	WQHU549	Extension of First Deadline	9/2/2016	LS	A	New York-No. New Jer.-Long Isl
0007441601	WQHU550	Extension of First Deadline	9/2/2016	LS	A	Philadelphia-Wilmington-Atl. City
0007441602	WQHU551	Extension of First Deadline	9/2/2016	LS	A	Washington-Baltimore, DC-MD-VA
0007441603	WQHU552	Extension of First Deadline	9/2/2016	LS	A	Richmond-Petersburg, VA
0007441604	WQHU553	Extension of First Deadline	9/2/2016	LS	A	Greensboro-Winston-Salem-High
0007441605	WQHU554	Extension of First Deadline	9/2/2016	LS	A	Raleigh-Durham-Chapel Hill, NC
0007441606	WQHU555	Extension of First Deadline	9/2/2016	LS	A	Charlotte-Gastonia-Rock Hill,
0007441607	WQHU556	Extension of First Deadline	9/2/2016	LS	A	Columbia, SC
0007441608	WQHU557	Extension of First Deadline	9/2/2016	LS	A	Savannah, GA-SC
0007441609	WQHU558	Extension of First Deadline	9/2/2016	LS	A	Jacksonville, FL-GA
0007441610	WQHU559	Extension of First Deadline	9/2/2016	LS	A	Orlando, FL
0007441611	WQHU560	Extension of First Deadline	9/2/2016	LS	A	Miami-Fort Lauderdale, FL
0007441612	WQHU561	Extension of First Deadline	9/2/2016	LS	A	Fort Myers-Cape Coral, FL

0007441613	WQHU562	Extension of First Deadline	9/2/2016	LS	A	Sarasota-Bradenton, FL
0007441614	WQHU563	Extension of First Deadline	9/2/2016	LS	A	Tallahassee, FL-GA
0007441615	WQHU564	Extension of First Deadline	9/2/2016	LS	A	Greenville-Spartanburg-Anderson
0007441616	WQHU565	Extension of First Deadline	9/2/2016	LS	A	Lexington, KY-TN-VA-WV
0007441617	WQHU566	Extension of First Deadline	9/2/2016	LS	A	Detroit-Ann Arbor-Flint, MI
0007441618	WQHU567	Extension of First Deadline	9/2/2016	LS	A	Milwaukee-Racine, WI
0007441619	WQHU568	Extension of First Deadline	9/2/2016	LS	A	Chicago-Gary-Kenosha, IL-IN-WI
0007441620	WQHU569	Extension of First Deadline	9/2/2016	LS	A	Nashville, TN-KY
0007441621	WQHU570	Extension of First Deadline	9/2/2016	LS	A	Memphis, TN-AR-MS-KY
0007441622	WQHU571	Extension of First Deadline	9/2/2016	LS	A	Jackson, MS-AL-LA
0007441623	WQHU572	Extension of First Deadline	9/2/2016	LS	A	Montgomery, AL
0007441624	WQHU573	Extension of First Deadline	9/2/2016	LS	A	Mobile, AL
0007441625	WQHU574	Extension of First Deadline	9/2/2016	LS	A	New Orleans, LA-MS
0007441626	WQHU575	Extension of First Deadline	9/2/2016	LS	A	Baton Rouge, LA-MS
0007441627	WQHU576	Extension of First Deadline	9/2/2016	LS	A	Little Rock-North Little Rock,
0007441628	WQHU577	Extension of First Deadline	9/2/2016	LS	A	Dallas-Fort Worth, TX-AR-OK
0007441629	WQHU578	Extension of First Deadline	9/2/2016	LS	A	Austin-San Marcos, TX
0007441630	WQHU579	Extension of First Deadline	9/2/2016	LS	A	Houston-Galveston-Brazoria, TX

0007441631	WQHU580	Extension of First Deadline	9/2/2016	LS	A	San Antonio, TX
0007441632	WQHU581	Extension of First Deadline	9/2/2016	LS	A	Casper, WY-ID-UT
0007441633	WQHU582	Extension of First Deadline	9/2/2016	LS	A	Denver-Boulder-Greeley, CO-KS-
0007441634	WQHU583	Extension of First Deadline	9/2/2016	LS	A	Spokane, WA-ID
0007441635	WQHU584	Extension of First Deadline	9/2/2016	LS	A	Idaho Falls, ID-WY
0007441636	WQHU585	Extension of First Deadline	9/2/2016	LS	A	Twin Falls, ID
0007441637	WQHU586	Extension of First Deadline	9/2/2016	LS	A	Boise City, ID-OR
0007441638	WQHU587	Extension of First Deadline	9/2/2016	LS	A	Reno, NV-CA
0007441639	WQHU588	Extension of First Deadline	9/2/2016	LS	A	Salt Lake City-Ogden, UT-ID
0007441640	WQHU589	Extension of First Deadline	9/2/2016	LS	A	Flagstaff, AZ-UT
0007441641	WQHU590	Extension of First Deadline	9/2/2016	LS	A	Albuquerque, NM-AZ
0007441642	WQHU591	Extension of First Deadline	9/2/2016	LS	A	Phoenix-Mesa, AZ-NM
0007441643	WQHU592	Extension of First Deadline	9/2/2016	LS	A	Tucson, AZ
0007441644	WQHU593	Extension of First Deadline	9/2/2016	LS	A	Los Angeles-Riverside-Orange CA
0007441645	WQHU594	Extension of First Deadline	9/2/2016	LS	A	San Diego, CA
0007441646	WQHU595	Extension of First Deadline	9/2/2016	LS	A	Fresno, CA
0007441647	WQHU596	Extension of First Deadline	9/2/2016	LS	A	San Francisco-Oakland-San Jose
0007441648	WQHU597	Extension of First Deadline	9/2/2016	LS	A	Eugene-Springfield, OR-CA

0007441649	WQHU598	Extension of First Deadline	9/2/2016	LS	A	Portland-Salem, OR-WA
0007441650	WQHU599	Extension of First Deadline	9/2/2016	LS	A	Seattle-Tacoma-Bremerton, WA
0007441651	WQHU600	Extension of First Deadline	9/2/2016	LS	A	State College, PA
0007441652	WQHU601	Extension of First Deadline	9/2/2016	LS	A	Harrisburg-Lebanon-Carlisle, PA
0007441653	WQHU602	Extension of First Deadline	9/2/2016	LS	A	Salisbury, MD-DE-VA
0007441654	WQHU603	Extension of First Deadline	9/2/2016	LS	A	Staunton, VA-WV
0007441655	WQHU604	Extension of First Deadline	9/2/2016	LS	A	Roanoke, VA-NC-WV
0007441656	WQHU605	Extension of First Deadline	9/2/2016	LS	A	Greenville, NC
0007441657	WQHU606	Extension of First Deadline	9/2/2016	LS	A	Augusta-Aiken, GA-SC
0007441658	WQHU607	Extension of First Deadline	9/2/2016	LS	A	Dothan, AL-FL-GA
0007441659	WQHU608	Extension of First Deadline	9/2/2016	LS	A	Albany, GA
0007441660	WQHU609	Extension of First Deadline	9/2/2016	LS	A	Macon, GA
0007441661	WQHU610	Extension of First Deadline	9/2/2016	LS	A	Columbus, GA-AL
0007441662	WQHU611	Extension of First Deadline	9/2/2016	LS	A	Chattanooga, TN-GA
0007441663	WQHU612	Extension of First Deadline	9/2/2016	LS	A	Knoxville, TN
0007441664	WQHU613	Extension of First Deadline	9/2/2016	LS	A	Pittsburgh, PA-WV
0007441665	WQHU614	Extension of First Deadline	9/2/2016	LS	A	Toledo, OH
0007441666	WQHU615	Extension of First Deadline	9/2/2016	LS	A	Fort Wayne, IN

0007441667	WQHU616	Extension of First Deadline	9/2/2016	LS	A	Champaign-Urbana, IL
0007441668	WQHU617	Extension of First Deadline	9/2/2016	LS	A	Evansville-Henderson, IN-KY-IL
0007441669	WQHU618	Extension of First Deadline	9/2/2016	LS	A	Paducah, KY-IL
0007441670	WQHU619	Extension of First Deadline	9/2/2016	LS	A	Greenville, MS
0007441671	WQHU620	Extension of First Deadline	9/2/2016	LS	A	Birmingham, AL
0007441672	WQHU621	Extension of First Deadline	9/2/2016	LS	A	Pensacola, FL
0007441673	WQHU622	Extension of First Deadline	9/2/2016	LS	A	Biloxi-Gulfport-Pascagoula, MS
0007441674	WQHU623	Extension of First Deadline	9/2/2016	LS	A	Shreveport-Bossier City, LA-AR
0007441675	WQHU624	Extension of First Deadline	9/2/2016	LS	A	Monroe, LA
0007441676	WQHU625	Extension of First Deadline	9/2/2016	LS	A	Fort Smith, AR-OK
0007441677	WQHU626	Extension of First Deadline	9/2/2016	LS	A	Fayetteville-Springdale-Rogers
0007441678	WQHU627	Extension of First Deadline	9/2/2016	LS	A	Springfield, MO
0007441679	WQHU628	Extension of First Deadline	9/2/2016	LS	A	Jonesboro, AR-MO
0007441680	WQHU629	Extension of First Deadline	9/2/2016	LS	A	Columbia, MO
0007441681	WQHU630	Extension of First Deadline	9/2/2016	LS	A	Peoria-Pekin, IL
0007441682	WQHU631	Extension of First Deadline	9/2/2016	LS	A	Davenport-Moline-Rock Island,
0007441683	WQHU632	Extension of First Deadline	9/2/2016	LS	A	Cedar Rapids, IA
0007441684	WQHU633	Extension of First Deadline	9/2/2016	LS	A	North Platte, NE-CO

0007441685	WQHU634	Extension of First Deadline	9/2/2016	LS	A	Abilene, TX
0007441686	WQHU635	Extension of First Deadline	9/2/2016	LS	A	San Angelo, TX
0007441687	WQHU636	Extension of First Deadline	9/2/2016	LS	A	Hobbs, NM-TX
0007441688	WQHU637	Extension of First Deadline	9/2/2016	LS	A	Lubbock, TX
0007441689	WQHU638	Extension of First Deadline	9/2/2016	LS	A	Amarillo, TX-NM
0007441690	WQHU639	Extension of First Deadline	9/2/2016	LS	A	Scottsbluff, NE-WY
0007441691	WQHU640	Extension of First Deadline	9/2/2016	LS	A	Honolulu, HI
0007441692	WQHU641	Extension of First Deadline	9/2/2016	LS	A	Puerto Rico & Virgin Isl.
0007441693	WQHU642	Extension of First Deadline	9/2/2016	LS	A	Gulf of Mexico
0007441694	WQHU643	Extension of First Deadline	9/2/2016	LS	A	Burlington, VT-NY
0007441695	WQHU644	Extension of First Deadline	9/2/2016	LS	A	Northern Michigan, MI
0007441696	WQHU645	Extension of First Deadline	9/2/2016	LS	A	Elkhart-Goshen, IN-MI
0007441697	WQHU646	Extension of First Deadline	9/2/2016	LS	A	Tupelo, MS-AL-TN
0007441698	WQHU647	Extension of First Deadline	9/2/2016	LS	A	Lafayette, LA
0007441699	WQHU648	Extension of First Deadline	9/2/2016	LS	A	Lake Charles, LA
0007441700	WQHU649	Extension of First Deadline	9/2/2016	LS	A	Joplin, MO-KS-OK
0007441701	WQHU650	Extension of First Deadline	9/2/2016	LS	A	Des Moines, IA-IL-MO
0007441702	WQHU651	Extension of First Deadline	9/2/2016	LS	A	Grand Forks, ND-MN

0007441703	WQHU652	Extension of First Deadline	9/2/2016	LS	A	Minot, ND
0007441704	WQHU653	Extension of First Deadline	9/2/2016	LS	A	Bismarck, ND-MT-SD
0007441705	WQHU654	Extension of First Deadline	9/2/2016	LS	A	Fargo-Moorhead, ND-MN
0007441706	WQHU655	Extension of First Deadline	9/2/2016	LS	A	Aberdeen, SD
0007441707	WQHU656	Extension of First Deadline	9/2/2016	LS	A	Rapid City, SD-MT-ND-NE
0007441708	WQHU657	Extension of First Deadline	9/2/2016	LS	A	Sioux Falls, SD-IA-MN-NE
0007441709	WQHU658	Extension of First Deadline	9/2/2016	LS	A	Sioux City, IA-NE-SD
0007441710	WQHU659	Extension of First Deadline	9/2/2016	LS	A	Omaha, NE-IA-MO
0007441711	WQHU660	Extension of First Deadline	9/2/2016	LS	A	Lincoln, NE
0007441712	WQHU661	Extension of First Deadline	9/2/2016	LS	A	Grand Island, NE
0007441713	WQHU662	Extension of First Deadline	9/2/2016	LS	A	Wichita, KS-OK
0007441714	WQHU663	Extension of First Deadline	9/2/2016	LS	A	Topeka, KS
0007441715	WQHU664	Extension of First Deadline	9/2/2016	LS	A	Tulsa, OK-KS
0007441716	WQHU665	Extension of First Deadline	9/2/2016	LS	A	Western Oklahoma, OK
0007441717	WQHU666	Extension of First Deadline	9/2/2016	LS	A	Santa Fe, NM
0007441718	WQHU667	Extension of First Deadline	9/2/2016	LS	A	Pueblo, CO-NM
0007441719	WQHU668	Extension of First Deadline	9/2/2016	LS	A	Billings, MT-WY
0007441720	WQHU669	Extension of First Deadline	9/2/2016	LS	A	Great Falls, MT

0007441721	WQHU670	Extension of First Deadline	9/2/2016	LS	A	Missoula, MT
0007441722	WQHU671	Extension of First Deadline	9/2/2016	LS	A	Farmington, NM-CO
0007441723	WQHU672	Extension of First Deadline	9/2/2016	LS	A	Redding, CA-OR
0007441724	WQHU673	Extension of First Deadline	9/2/2016	LS	A	Pendleton, OR-WA
0007441725	WQHU674	Extension of First Deadline	9/2/2016	LS	A	Richland-Kennewick-Pasco, WA
0007441726	WQHU675	Extension of First Deadline	9/2/2016	LS	A	Anchorage, AK
0007693854	WQHU643	Renewal Only	3/9/2017	LS	A	Burlington, VT-NY
0007693837	WQHU644	Renewal Only	3/9/2017	LS	A	Northern Michigan, MI
0007693859	WQHU645	Renewal Only	3/9/2017	LS	A	Elkhart-Goshen, IN-MI
0007693860	WQHU646	Renewal Only	3/9/2017	LS	A	Tupelo, MS-AL-TN
0007693861	WQHU647	Renewal Only	3/9/2017	LS	A	Lafayette, LA
0007693862	WQHU648	Renewal Only	3/9/2017	LS	A	Lake Charles, LA
0007693851	WQHU649	Renewal Only	3/9/2017	LS	A	Joplin, MO-KS-OK
0007693863	WQHU650	Renewal Only	3/9/2017	LS	A	Des Moines, IA-IL-MO
0007693864	WQHU651	Renewal Only	3/9/2017	LS	A	Grand Forks, ND-MN
0007693865	WQHU652	Renewal Only	3/9/2017	LS	A	Minot, ND
0007693849	WQHU653	Renewal Only	3/9/2017	LS	A	Bismarck, ND-MT-SD

0007693855	WQHU654	Renewal Only	3/9/2017	LS	A	Fargo-Moorhead, ND-MN
0007693866	WQHU655	Renewal Only	3/9/2017	LS	A	Aberdeen, SD
0007693867	WQHU656	Renewal Only	3/9/2017	LS	A	Rapid City, SD- MT-ND-NE
0007693868	WQHU657	Renewal Only	3/9/2017	LS	A	Sioux Falls, SD- IA-MN-NE
0007693852	WQHU658	Renewal Only	3/9/2017	LS	A	Sioux City, IA- NE-SD
0007693869	WQHU659	Renewal Only	3/9/2017	LS	A	Omaha, NE-IA- MO
0007693870	WQHU660	Renewal Only	3/9/2017	LS	A	Lincoln, NE
0007693838	WQHU661	Renewal Only	3/9/2017	LS	A	Grand Island, NE
0007693839	WQHU662	Renewal Only	3/9/2017	LS	A	Wichita, KS-OK
0007693856	WQHU663	Renewal Only	3/9/2017	LS	A	Topeka, KS
0007693840	WQHU664	Renewal Only	3/9/2017	LS	A	Tulsa, OK-KS
0007693841	WQHU665	Renewal Only	3/9/2017	LS	A	Western Oklahoma, OK
0007693853	WQHU666	Renewal Only	3/9/2017	LS	A	Santa Fe, NM
0007693842	WQHU667	Renewal Only	3/9/2017	LS	A	Pueblo, CO-NM
0007693848	WQHU668	Renewal Only	3/9/2017	LS	A	Billings, MT-WY
0007693843	WQHU669	Renewal Only	3/9/2017	LS	A	Great Falls, MT

0007693844	WQHU670	Renewal Only	3/9/2017	LS	A	Missoula, MT
0007693845	WQHU671	Renewal Only	3/9/2017	LS	A	Farmington, NM-CO
0007693846	WQHU672	Renewal Only	3/9/2017	LS	A	Redding, CA-OR
0007693858	WQHU673	Renewal Only	3/9/2017	LS	A	Pendleton, OR-WA
0007693847	WQHU674	Renewal Only	3/9/2017	LS	A	Richland-Kennewick-Pasco, WA
0007693850	WQHU675	Renewal Only	3/9/2017	LS	A	Anchorage, AK

Telesaurus GB, LLC License:

File Number	Call Sign	Purpose	Receipt Date	Radio Service Code	Channel Block	Market Name
0007441729	WQGN602	Extension of First Deadline	9/2/2016	LS	C	Sacramento-Yolo, CA
0007694217	WQGN602	Renewal Only	3/9/2017	LS	C	Sacramento-Yolo, CA
0007701965	WQGN602	Assignment of Authorization	3/16/2017	LS	C	Sacramento-Yolo, CA

EXHIBIT 2

Warren Havens
& Polaris PNT PBC

Friday, September 2, 2016

To: FCC Office of the Secretary

Attn: Chief, Wireless Telecommunications Bureau (WTB)

Re: Conditional submission for protective purposes, regarding an equitable extension of the construction/ substantial service deadline for certain LMS licenses, on Exhibit 1.
The current deadline is September 4, 2016.

Filed: On ULS, as a pleading, on license Call Signs:
WQHU548 (Skybridge), as “lead” Call Sign of the Skybridge licenses, and
WQGN602 (Telesaurus), together the “**Licenses**”

Cc: Courtesy copies by email to Messrs. Scot Stone and Jeff Tobias of the WTB.

CoS: Copies served on known parties or potential parties.
See attached certificate of service (COS)

Introduction¹

This submission or filing (the “Filing” or the “Submission”) is by Warren Havens, an individual, (“Havens”) and Polaris PNT PBC, a Delaware Public Benefit Corporation, identified in Appendix 1 hereto (“Polaris”) (together, the “Filers”).² The Filing is **not** on behalf of Receiver Susan Uecker or the licensees in receivership.^{3 4} The Alameda County Court, based on a

¹ As initial background, Filers reference a filing they submitted yesterday in dockets 11-71 and 13-85, with a copy to the WTB Chief, with updates on court matters relevant to the Licenses.

² As shown in Appendix 1, Polaris was formed, in part, to play a role in nonprofit organizations in its field, precision Position, Navigation, and Timing, including in Skybridge Spectrum Foundation.

³ Filer Havens sought communications with the Receiver in relation to seeking an extension of the Licenses “construction” / “substantial service” (or “construction”) deadline, the subject of this Filing. Filers will respond to any inquiry by the FCC, for its purposes, on that matter or other aspects of this Filing.

⁴ As of the time this Filing was prepared, Filers have not received any extension request for the Licenses submitted by the Receiver or other person and thus cannot factor that in, in this Filing. In some relevant FCC matters, Filer Havens counsel of record is Jeff Blumenfeld (see docket 11-

receivership order,⁵ has prohibited Havens from making any communication on behalf of the licensees in receivership, and in making this filing Havens believes he is complying with those restrictions.⁶

The Filing is submitted with summary content and form, and may be supplemented later, consistent with the conditions and purposes noted herein, relevant FCC rules and procedures, and any orders or instructions of a court.

The Filers submit that-- for purposes of the current unique situation -- the receivership *pendente lite*, the California Bankruptcy, the FCC Sippel Order (and FCC lengthy lack of action on it and its appeals) as the or a seminal cause of the receivership and bankruptcy, etc., for reasons summarized herein – the Licenses and licensees of the Licenses should be granted at least an equitable license-preservation construction deadline extension of (i) the length of time from when the court granted the Leong motion for a receivership to 24 months past the termination of the receivership (a date not yet known), with allowance to request a further extension at the end of that period if good cause is shown, and subject to FCC scrutiny if, in that extension period during the receivership, a subject License is sold (sales are not good cause for license extensions).

71) and in the other relevant FCC matters, Havens currently acts *pro se*. See *Wallerstein, Receiver*, cited below.

⁵ The order is on appeal (Havens is the appellant). The order may be subject to the California Bankruptcy case including as to federal law supremacy. Under the order, the receiver took immediate control of the licenses. The FCC grant of control is under a pending petition reconsideration, e.g., under *Gresham* DA 09-540 as recently cited by the US D.O.J. in the Skybridge bankruptcy case. Havens is a petitioner.

⁶ The underlying receivership order and its resulting orders and actions are on appeal before the California Court of Appeal, and one basis of appeal is that the order of the state court, and the receivership request pleadings by Leong are subject to express and field preemption under the Federal Communications Act and exclusive FCC jurisdiction and thus are void, and ramifications are *void ab initio* (see, e.g. *Gesham...Cherry, Receiver*, FCC 11-127). In this regard, as part of fundamental Due Process rights under the Fifth Amendment, Havens (and the receivership entities) have a right to appeal before the relevant authority, and on this issue of preemption, the FCC (and federal courts) are the relevant authority.

This is a conditional Filing for protective purposes. First, there is pending an involuntary bankruptcy case of the “Leong Partnership” (the “California Bankruptcy”) discussed further below. Filers allege in the California Bankruptcy that the Leong Partnership, the “alleged Debtor” in the Bankruptcy Case, has *de facto*, and also alleged *de jure*, control over the Licenses and over other licenses under a state court receivership obtained by Arnold Leong, of Reno, Nevada (“Leong”), with Susan Uecker as the Receiver. Havens and Polaris, the Filers herein, are petitioning creditors in this bankruptcy case. Petitioning creditors act for benefit of the bankruptcy estate, and all of the known and unknown creditors, in an involuntary bankruptcy, subject to court authority and determinations. An involuntary bankruptcy case commencement, caused by creditors filing the Petition, causes a “gap period” until, generally, the alleged Debtor responds, and if it contests the Petition, the court determines if and how the case will proceed, and if so, enters an order for relief for that purpose. In the case of this bankruptcy, the gap period only recently commenced as of the date of this filing, September 2, 2016. This Filing is submitted, first, to preserve rights with regard to the court issuing an order for relief, and thereafter, the controller of the Debtor’s estate, with all needed FCC approvals, acts as controller of the Licenses. For that purpose, this Filing seeks equitable protection of the Licenses.⁷

The Filing is also submitted by Havens under protected federal rights, including First Amendment speech and petition rights and Fifth Amendment property and due process rights⁸

⁷ If a party with rights or potential rights or obligations, fails to timely submit a filing under those rights or obligations, the ramifications may include that the party is deemed or found to have waived those rights or failed in those obligations. By this Filing, Filers seek to avoid any such ramifications that would be adverse to the Filers, and to the estate and parties in the California Bankruptcy, and that also may cause complications in FCC proceedings and for the public interest underling licensing actions regarding the Licenses.

⁸ Havens is the protective Member of Skybridge, a nonprofit under IRC §501(c)(3) (there are no owners), and the majority owner of Telesaurus.

and to assist with the protective purposes of the subject receivership *pendente lite*.⁹

The Filing is made on the premise of the receivership being a receivership *pendente lite*, as the receivership court made clarified in its recent June 30, 2016 hearing.¹⁰ Under FCC precedent, the FCC looks to the eventual party or parties to obtain control of licenses at the conclusion of the litigation (the “*lite*”) for which the receivership is intended (whether effective or not) to preserve licenses. In the instant case, the “Sippel Order” of FCC Judge Sippel, discussed below, is the cause of the receivership and its intended protective purpose. Parties *other than* the Receiver and Mr. Leong, have appealed the Sippel Order, for good causes shown, to protect the licensee and licenses involved. Filers contend herein that the FCC should look to the plans and due diligence of the *pre-receivership* licensees, Skybridge and Telesaurus, in deciding on an extension described herein. Havens can address those pre-receivership matters, and in summary form, does so below. While the actions of the current licensee controller, the Receiver, are at issue in any extension grant of the Licenses, the FCC cannot look to the due diligence and license development, of the sort that the FCC considers to be among the good causes to grant extensions of construction deadlines, of the Receiver because there is none and none is shown, or of Mr. Leong since there is none and none is shown.¹¹ In this regard, in

⁹ In this regard, the receivership court gave guidance that pending extension and renewal requests for licenses submitted by Havens to the FCC are relevant to the purpose of this Filing.

¹⁰ The records in the docket of receivership court action are public and online (fees required for full document downloads) and shed light on aspects of this Filing. Filers FCC filing of yesterday (see preceding footnote) updated the FCC on this court action, and on two other court actions relevant to the receivership and the FCC licenses it currently controls (reconsideration pending).

¹¹ The fundamental basis for extension of a construction deadline is a sound showing that, if granted, the demonstrated licensee plans are reasonable to pursue and satisfy substantial service in the extension period, which considers the due diligence to date, and special factors such as pursuit of advanced technologies and services in the public interest. The Receiver and Leong have no such plan, positions, legal standing, or statements to the FCC, as to those matters, nor have they, as instructed by the receivership court, engaged Havens on these matters. License sales (the position advocated by the Receiver and Leong before the FCC) is not a reason the FCC accepts to grant construction deadline extensions.

Wallerstein, Receiver, 1 F.C.C.2d 91; 1965 FCC LEXIS 390, the FCC has explained, “Our processes are intended to make [license] grants when ... in the public interest.... Individual benefits and detriments have no place.... *WOKO v. FCC*, 329 U.S. 223 at 228.... If there is a failure to renew the license... Wallerstein will have no license The qualifications of... a prospective... licensee...are not...a reason for bypassing the orderly processes of license renewal.

Conditional Submission

1. As shown in FCC filings submitted by the Receiver and Leong, and in records of the receivership court action, the Receivership is based on the Sippel Order (cited below) and its purported injury or dangers to the receivership entities’ licenses, including the Licenses. The Receivership has caused a major lapse (in time, capital, personnel, momentum and other substance) in the due diligence, plans and development of the Licenses that otherwise would have continued by the licensees had there been no receivership. This lapse is a negative factor in support of extensions. The Licenses and Licensees deserve relief from this negative factor, including, to start with, for reasons shown in the pending appeals of the Sippel Order (by which we include here, the petition for reconsideration before Judge Sipple of the Sippel Order) and since the receivership court intended the receivership to be a license-protection receivership *pendente lite* (see above), and for related reasons.¹²

¹² For example: (i) It is now clear that Leong grossly misrepresented to the receivership court, over most of year 2015, as to the nature of the Sippel Order, e.g., he emphatically predicted for a half year, to get the receivership, that the FCC would imminently issue an HDO against Havens and all the receivership entities which would quash rights under the licenses or lead to total license loss (see, e.g., the Havens opening brief in the appeal of the receivership order, an Exhibit in Filers’ filing before the FCC of yesterday, 9-1-2016), and that he is co-controller (of ultimate controller) of all of the FCC licenses of the receivership entities. But Leong never presented his case for either of these to the FCC for any decision but informally instructed the FCC he was “following” the Sippel Order to get a receivership he suggested FCC staff would like with no support for that, either. He approached the wrong authority, a state court, rather

2. Filers reference and incorporate herein the following filings and matters, already before the FCC by the Filers (with other receivership entities) in further support of this Submission. Each of the following contains substantial parts, that can be easily ascertained, that provides such support:

a. All prior license construction-deadline extension requests and renewal applications filed by Telesaurus Holdings GB LLC and Skybridge Spectrum Foundation,

including but not limited to:

- Skybridge's and THL's July 13, 2009 LMS renewal application showings, see e.g. File Nos. 0003898112 and 0003898221, respectively, and their September 23, 2010 supplements thereto
- Skybridge's and THL's July 18, 2012 extension request showings (see e.g. File No. 0005315615), and their July 19, 2012 supplements thereto (see e.g. see e.g. File No. 0005317957)
- Supplement Regarding Private Commons Arrangement, filed as a pleading via the ULS pleading system on 2/11/2013 (See e.g. File No. 0005315615 under the "Pleadings" section of the "Admin" tab) (the "Second Supplement")
- Skybridge's and THL's Requests for Extension of Time, filed 7/18/14, (see e.g. File No. 0006385354), and the supplement thereto filed on July 24, 2014 and the further supplement thereto filed August 4, 2014.

b. The Petition for Reconsideration, of FCC Order, DA 14-1257 filed by Skybridge Spectrum Foundation and Telesaurus Holdings GB LLC. Filed September 29, 2014, regarding FCC Order, DA 14-1257, released August 29, 2014. See, e.g., the petition for reconsideration,

At Pages 2-3:

....For the reasons previously shown by Petitioners in their Extensions the amount of time granted is insufficient to be practically meaningful for development and deployment of M-LMS licenses and services as they have planned and explained to the FCC. Upon reconsideration, for the reasons given herein, the Bureau should grant the additional amounts of time Petitioners requested for the reasons previously given, or at minimum more fully address Petitioners' showings and explain why it believes they were not adequate to grant Petitioners more time to construct than it granted to the other M-LMS licensees subject of the Order.

than the exclusive authority, the FCC, and he had multiple law firms (at least three, including an FCC law expert) representing him during this course. (ii) See also, in the 9-1-2016 filing, the motion for termination of the receivership.

SSF holds a substantial amount of M-LMS spectrum nationwide, as does THL, and other LLCs managed by Havens hold other spectrum nationwide. All will be presenting requests for extensions of time in the near future in which there will be additional reasons and explanations why SSF, along with these LLCs, plan to use all of the spectrum they have, the LMS, AMTS, low band 35/43 MHz, and MAS, for integrated smart transportation, energy and environment wireless. Petitioners request that the Commission wait to decide on this Recon until it receives and considers those other applications for extension of time. When SSF submits its request to renew and extend the deadlines for its AMTS, along with its affiliates that hold AMTS, it will file an amendment to this petition for reconsideration.

At Page 9:

Granting extension requests does not mean that the licensees will not act well before the extension deadline, to construct and operate, especially where they have a nationwide collection of licenses, as in this case, but it allows the licensees and the providers of equipment and services, the time needed to, at acceptable risk (which translates directly into financial viability) get the planning, capital raising, system deployments and initial services in place, over such an extensive area, with the noted advanced new radio technologies and applications.

At Page 11:

In addition, Petitioners hold licenses nationwide unlike the other M-LMS licensees subject of the Order. That is much harder buildout to accomplish in given period of time. THL and SSF also work with affiliates who have spectrum in other bands nationwide and plans to work together on deployment of nationwide systems for intelligent transportation systems, high accuracy location, peer-to-peer, broadcast, etc.

Both Skybridge and Telesaurus gave reasons why the construction-substantial service extension until September 4, 2016, was too short considering the backdrop, that the entire LMS service was essentially suspended during the 10-year rulemaking (RM-10403, and then NPRM WT Docket No. 06-49). That NPRM was only terminated soon before the LMS Order noted above and the extensions to September 4, 2016, was only approximately 2 years after that termination.¹³ The default construction period for the first milestone for LMS licenses is 5 years, not 2 years. For this reason alone, as the petition for reconsideration explained, the current deadline of September 4, 2016, should be extended for at least 3 more years. The Petitioners in

¹³ See *Order*, FCC 14-79, released June 10, 2014, 29 *FCC Rcd* 6361

the petition for reconsideration, and in various other filings before the Commission, have argued why the LMS radio service is essentially for new and advanced technology and services, never previously undertaken and accomplished. That is how the Commission described LMS in the seminal “LMS Order” in 1995, which essentially finalized how the Commission would establish and regulate the LMS service. The ending part of that LMS Order in 1995 is where the Commission made this clear. Therefore, as in other radio services for new or primarily new technology and/or services, the Commission should establish a 10-year only construction-substantial service requirement and deadline.

c. Part 22 Paging License Extension Requests (including discussion of 3-band plan including LMS, which are primary licenses for the 900 MHz component of the 3-band plan, including for licenses of Skybridge):

Extension Request, filed by Intelligent Transportation & Monitoring Wireless, LLC (Nov.3, 2015); Extension Request, filed by Skybridge Spectrum Foundation (Nov. 3, 2015); and Extension Request, filed by V2G LLC (Nov. 3, 2015), regarding requests for waiver and extension of time to construct Part 22 UHF/VHF geographic area Paging Service licenses, File Nos. 0007013592, etc. (Intelligent Transportation for 999 licenses total), 0007013900, etc. (Skybridge for 133 licenses), and 0007012589, etc. (V2G for 1,000 licenses). (together, the “Paging Extension Requests”). Some portions of these extension requests were filed confidentially with the FCC. See also, FCC Public Notice, DA 15-1333, released November 19, 2015.

Among other things, the Paging Extension Requests seek extensions of time so that the licenses can be used in a multi-band nationwide plan along with licenses held by the requesting entities and affiliated entities in the 200MHz and 900MHz bands, including the LMS radio service, which have only recently been cleared of certain major encumbrances so as to be available across the nation for deployment of advanced wireless services, including precision

PNT, intelligent transportation systems, smart energy, smart environment monitoring, etc., for the benefit of the public interest. Also, see these extensions requests:

At page 6:

(4) Factor 4: The HC Licensees have obtained the multiple sub-GHz range spectrum licenses needed for the noted major wide-area mission critical applications, in lower 900 MHz (in LMS, MAS and a small amount of Part 22 licenses), lower 200 MHz (in AMTS licenses) and in the HC Licenses in 35 and 43 MHz Low Band (sometimes herein called “40 MHz range” for short). The “whole” of these parts is worth, for these applications, far more than the sum of the separate parts.

The HC Licensees respectfully submit that the FCC should grant relief such that these HC Licensees may be used in an integrated nationwide plan that has been carefully researched and has large potential not being addressed by other licensees or licensee groups: this relief includes the relief in this Extension Request, and the relief sought in the now-pending AMTS license renewal applications and related requests of SSF, ENL (including ENL-2), and VSL.

At page 8:

This unique nationwide multi-band assembly of licenses was achieved by extensive participation in auctions including and after Auction 57, and some secondary market acquisitions, along with successes to clear off the majority of co-channel licensed stations blocking use of the HC Licensees’ AMTS licenses in most major markets and traffic corridors, by successful actions before the FCC (including pursuant to the Commission’s HDO FCC 11-64 (regarding AMTS A block spectrum), and by settlement of a court case (regarding AMTS B block spectrum), and prevailing in docket 06-49 (no changes in the M-LMS rules, and renewal of the HC Licensees’ M-LMS licenses, and by other extensive and costly actions.

Relief, including grant of this Extension Request, is needed and warranted for this unique assembly of licenses to be put to use under the HC Licensees’ unique and practical joint nationwide plan for the highest and best uses of the three bands described herein, and in the referenced pending AMTS license applications.

At page 12:

(ii) the extensive efforts and time spent by the HC Licensees including the HC Paging Licensees to clear off of their AMTS spectrum incumbent co-channel stations that blocked use of this spectrum in most of the major markets and transport corridors in the nation – this was only achieved in late 2013 to late 2014, and success to keep the M-LMS rules from being adversely changed as was considered in the NPRM docket 06-49, which was achieved in mid 2014 by the FCC decisions noted above.

In short, only in the last year, approximately, has the vast majority of the HC Licensees total spectrum in these three bands been available for use in their nationwide plan. They cannot complete due diligence on research, development and deployment plans in the subject Part 22 licenses apart from the 200 and 900 MHz spectrum being available for use. With the just noted success in AMTS and M-LMS licensing matters, the HC Licensees including the HC Paging Licensees can now complete their plans for all three bands, the VHF low band (“40 MHz” for short), the 200 MHz band, and the 900 MHz band.

d. AMTS Renewal and Extension Application Showings: The pending renewal and extension requests applications’ showings filed by Skybridge, Environmentel, and Verde Systems LLC for certain of their AMTS call signs with renewal dates of 4/26/15.

See e.g. Skybridge’s AMTS renewal application and extension request applications’ showings, File Nos. 0006778588 and 0006778612, respectively, filed April 26, 2015, and supplemented November 16, 2015 (see e.g. File No. 0006799314). The renewal and extensions showings discuss the multi-band plan for advanced wireless, as noted above, and the rarity of putting together such a unique nationwide licenses collection and the tremendous benefits the three bands working together, including LMS, can provide to the public.

See e.g. the discussion in the April 26, 2015 renewal and extension showing at its Section 1.2, and also its Group B exhibits, Group E exhibits, Group F exhibits, Group G exhibits, and Group N exhibit.

e. MAS Renewal Applications Showing: The pending Skybride renewal application and extension request applications’ showings, a request and a supplement thereto, both filed March 29, 2016, see e.g. File No. 0007206924. These renewal and extensions showings also discuss the multi-band plan for advanced wireless, as noted above, involving LMS, and the benefits it can provide to the public.

See e.g. the “Request for Limited Extension of Construction Deadlines” filed March 29, 2016, at its Section II, items 6, 7, 12 and 13. Also, see e.g. the “Supplement Statement” filed March 29, 2016, at its Sections 4 and 5.

3. As indicated above, Filers herein also assert that, for no fault of their own (or any affiliate) FCC Judge Sippel issued the “Sippel Order”,¹⁴ which has become the basis of the establishment of the receivership of Receiver Susan Uecker, obtained by certain representations of Arnold Leong. The Receiver and Mr. Leong have explained that basis of the receivership to the Commission and courts, in various filings.¹⁵

Filers assert that the Commission should have decided on the Sippel Order, and the appeals thereof, promptly after the pleading cycle ended, because the Sippel Order, by its

¹⁴ *Memorandum Opinion & Order*, FCC 15M-14, released April 22, 2015 (appeals pending).

¹⁵ For example, see the following documents:

1. *Petition to Stay or Hold in Abeyance the Issuance of a Hearing Designation Order*, filed by Brian Weimer, FCC counsel to Susan L. Uecker, Receiver, on March 18, 2016, in Docket Nos. 11-71 and 13-85 (see e.g. the “petition’s” text at sections 1 and 2);
2. *Letter Request to Refund Application Fees Associated with Involuntary Transfer of Control of Assets and Entities Owned by Warren Havens to Court-Appointed Receiver*, filed by Brian Weimer, FCC Counsel to Susan L. Uecker, Receiver, on February 9, 2016, addressed to Marlene H. Dortch, Secretary of FCC, with attention to Office of Managing Director (see e.g. first two paragraphs of page 2).
3. *Opposition to “Petition for Reconsideration, to Deny, and for Other Relief”*, filed by Stephen Coran, FCC counsel to Arnold Leong, on March 24, 2016, in Docket Nos. 11-71 and 13-85, and regarding File Nos. 0007061847 and 0007067613 (see e.g. second paragraph on pages 1 and 2, and footnotes 3 and 4).
4. *Letter* dated May 20, 2015, and associated *Email* of May 20, 2015 and attachments, filed by Stephen Coran, FCC counsel to Arnold Leong, addressed to Roger Sherman, Chief WTB FCC and copied to Judge Sippel and other FCC staff, regarding, among other things, the Alameda County Superior Court case and Judge Sippel’s Order, FCC 15M-14 (see e.g. paragraph 2 on page 1, and footnote 2, as well as the copies of attached court pleadings asserting FCC 15M-14 as basis for a receivership) (this Letter was attached as “Exhibit 4” to Skybridge’s petition for reconsideration filed March 11, 2016, regarding File Nos. 0007061847 and 0007067613).
5. *Emergency Motion of Receiver Susan L. Uecker for Relief from Stay and Excuse from Turnover to Allow Receiver to Renew Certain FCC Licenses*, filed by Eric D. Schwartz, et al., attorneys for Susan Uecker, the Receiver in the SSF bankruptcy case, Case No. 16-10626 (CSS), In the United States Bankruptcy Court for the District of Delaware (see e.g. paragraph 14, on page 5)(a copy of this “Emergency Motion” was filed as “Exhibit A2” to SSF’s supplement to its MAS license renewal and extension applications, filed under lead Call Sign WQVT526).

internal content, and its decision to remove from the hearing, Docket 11-71, Warren Havens and associated companies, is an interlocutory decision, where the Commission should decide promptly after the end of the pleading cycle, because it is an order in the middle of the hearing (interlocutory), and a decision is needed to determine how the proceeding will go forward. Judge Sippel cited a part of FCC rule Section 1.251 that only permits the Judge to refer to the Commission a question of qualifications of a party in the hearing to be added to the hearing. The Commission explained when deciding on that rule subsection that it would give an FCC Judge an additional tool to control the hearing. It was not a tool that the Commission explained, or the rule itself states, gives the Judge the authority to remove a party from the hearing, but only to refer that qualification issue to the Commission. And it also does not give the Judge authority to pose to the Commission a different character qualification issue than noted above, including qualification to hold licenses.

The matters just noted are part of the pending appeals of the Sippel Order. They are noted here to make the point that the Sippel Order is an interlocutory order, and the Commission should decide quickly on interlocutory orders. That is why the rule on interlocutory orders specifies that an appeal will be within 5 days and 5 pages (unless special leave is granted). In this case, special leave for more time and a greater page length was granted, but that does not change the interlocutory character of the Sippel Order based on its content and the applicable rules. Parties' rights are affected by an interlocutory decision with regard to their continued participation in the hearing. To the extent the Sippel Order was *ultra vires*, as the appealing parties assert, that is all the more reason the Commission should have quickly decided the matter, because an *ultra vires* action against parties' rights is especially prejudicial for the parties, and something the Commission should especially seek to remedy.

The preceding paragraph is an additional reason why the Commission should extend the construction-substantial service deadline for a substantial time past the date the Commission decides upon the Sippel Order and the related appeals.

Respectfully,

/s/

Warren Havens, Individually
2509 Stuart Street
Berkeley, CA 94705
Ph: 510-914-0910

/s/

Warren Havens, President
Polaris PNT PBC
2649 Benvenue Ave., #3
Berkeley, CA 94704
Ph: 510-914-0910

Cc: by email to:
Mr. Scot Stone, WTB
Mr. Jeffrey Tobias, WTB
Mr. Jeff Blumenfeld, Esq. of Lowenstein Sandler¹⁶

¹⁶ Counsel of record to Havens in certain docket 11-71 matters.

EXHIBIT 1

Telesaurus Holdings GB LLC Call Sign: WQGN602

Skybridge Spectrum Foundation Call Signs:

WQHU548	WQHU591	WQHU634
WQHU549	WQHU592	WQHU635
WQHU550	WQHU593	WQHU636
WQHU551	WQHU594	WQHU637
WQHU552	WQHU595	WQHU638
WQHU553	WQHU596	WQHU639
WQHU554	WQHU597	WQHU640
WQHU555	WQHU598	WQHU641
WQHU556	WQHU599	WQHU642
WQHU557	WQHU600	WQHU643
WQHU558	WQHU601	WQHU644
WQHU559	WQHU602	WQHU645
WQHU560	WQHU603	WQHU646
WQHU561	WQHU604	WQHU647
WQHU562	WQHU605	WQHU648
WQHU563	WQHU606	WQHU649
WQHU564	WQHU607	WQHU650
WQHU565	WQHU608	WQHU651
WQHU566	WQHU609	WQHU652
WQHU567	WQHU610	WQHU653
WQHU568	WQHU611	WQHU654
WQHU569	WQHU612	WQHU655
WQHU570	WQHU613	WQHU656
WQHU571	WQHU614	WQHU657
WQHU572	WQHU615	WQHU658
WQHU573	WQHU616	WQHU659
WQHU574	WQHU617	WQHU660
WQHU575	WQHU618	WQHU661
WQHU576	WQHU619	WQHU662
WQHU577	WQHU620	WQHU663
WQHU578	WQHU621	WQHU664
WQHU579	WQHU622	WQHU665
WQHU580	WQHU623	WQHU666
WQHU581	WQHU624	WQHU667
WQHU582	WQHU625	WQHU668
WQHU583	WQHU626	WQHU669
WQHU584	WQHU627	WQHU670
WQHU585	WQHU628	WQHU671
WQHU586	WQHU629	WQHU672
WQHU587	WQHU630	WQHU673
WQHU588	WQHU631	WQHU674
WQHU589	WQHU632	WQHU675
WQHU590	WQHU633	

Certificate of Service

I, Warren Havens, certify that on this 2nd day of September 2016, I caused to be served by placing into the USPS mail system with first- class postage affixed, unless otherwise noted, a copy of the foregoing filing, including any attachments and exhibits, to the following:

Susan Uecker, Receiver
1613 Lyon Street
Suite A
San Francisco, CA 94115

Brian D Weimer
Sheppard Mullin Richter Hampton LLP
2099 Pennsylvania Ave NW, Suite 100
Washington, DC 20006

Stephen Coran
Lerman Senter PLLC
2000 K Street, N.W., Suite 600
Washington, D.C. 20006

Leong Partnership
Arnold Leong, General Partner
3111 Green River Drive
Reno, NV 89503

Arnold Leong
General Partner, Leong Partnership
3111 Green River Drive
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Mark Griffith
General Partner, Leong Partnership
1631 Walnut Street, Apt. C
Berkeley, CA 94709

Mark Griffith
General Partner, Leong Partnership
920 Cranbrook Court, #55
Davis, CA 95616

Channing Jones
General Partner, Leong Partnership
770 Cragmont Avenue
Berkeley, CA 94708

[Continued]

Parties to the appeals of Order, FCC 15M-14:

Jonathan Sallet, General Counsel
Office of General Counsel
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Linda Oliver, Associate General Counsel
Administrative Law Division
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

The Honorable Richard L. Sippel
Chief Administrative Law Judge
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Pamela Kane, Brian Carter, Michael Engel
Enforcement Bureau
Federal Communications Commission
445 12th Street, SW – Room 4-C330
Washington, D.C. 20554

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Counsel for MCLMs

Other FCC staff:

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Federal Communications Commission
Office of Inspector General
445 12th Street, SW
Washington, DC 20554

Christopher M. Shields
Federal Communications Commission
Office of Inspector General
445 12th Street, SW
Washington, DC 20554

/ s /

Warren Havens

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

WARREN HAVENS,

Petitioner,

v.

SUPERIOR COURT FOR THE COUNTY OF

ALAMEDA,

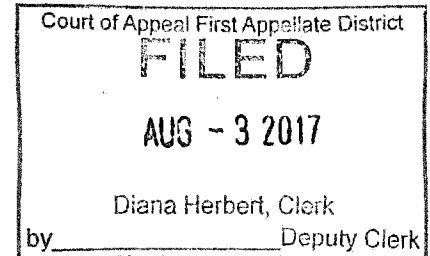
Respondent;

SUSAN UECKER,

Real Party in Interest.

A150411

Alameda No. 2002070640

**ORDER ISSUING ALTERNATIVE WRIT OF PROHIBITION****BY THE COURT:***

The court has conducted a detailed review of the record and the parties' briefing regarding this petition.

"In a contempt proceeding resulting in punitive sanctions . . . , guilt must be established beyond a reasonable doubt. [Citation.] A reviewing court will uphold a contempt judgment only if there is substantial evidence to sustain the jurisdiction of the trial court." (*Mitchell v. Superior Court* (1989) 49 Cal.3d 1230, 1256.) "In the review of a contempt proceeding 'the evidence, the findings, and the judgment are all to be strictly

* Before Simons, Acting P.J., Needham, J., and Bruiniers, J.

construed in favor of the accused [citation], and no intendments or presumptions can be indulged in aid of their sufficiency. [Citation.] If the record of the proceedings, reviewed in the light of the foregoing rules, fails to show affirmatively upon its face the existence of all the necessary facts upon which jurisdiction depended, the order must be annulled.’ [Citation.]” (*Ibid.*, italics omitted.) “A finding of indirect contempt . . . must be based upon a clear, specific, and unequivocal order.” (*In re Marcus* (2006) 138 Cal.App.4th 1009, 1016.) “ ‘Any ambiguity in a decree or order must be resolved in favor of an alleged contemnor.’ ” (*Id.* at p. 1015.)

Respondent superior court erred when it found petitioner’s September 2, 2016 submission to the Federal Communications Commission (FCC) violated a court order. The superior court’s November 16, 2015 order prohibited petitioner from “[c]ommunicating with the FCC regarding the FCC Licenses or the Receivership Entities.” That order was “clarifi[ed]” by the superior court’s July 11, 2016 order prohibiting petitioner from communicating “in a manner that might lead to the recipient of the communication to infer that the communication from [petitioner] may be on behalf of any Receivership Entity.” This court, having reviewed the record concerning respondent superior court’s July 11, 2016 order, determines that the most reasonable construction of respondent’s orders is that petitioner was permitted to communicate with the FCC as long as he clearly indicated he was not speaking on behalf of any Receivership Entity. Consequently, the contempt adjudication as to this count appears erroneous under the foregoing standards, because substantial evidence does not exist to sustain this contempt finding.¹

Therefore, let an alternative writ of prohibition issue prohibiting respondent Alameda County Superior Court from taking any further action on the December 14, 2016 “Order Holding Warren Havens in Contempt for Failure to Comply with Court Orders,” in *Arnold Leong v. Warren Havens, et al.*, Case No. 2002-070640, other than to vacate the finding that petitioner’s September 2, 2016 filing to the FCC violated a court order, and to impose a new punishment excluding this contempt finding; or, in the alternative, to appear and show cause before Division Five of this Court why a peremptory writ of prohibition should not issue.

¹ In light of this court’s conclusion concerning this contempt count, it is unnecessary to reach petitioner’s other challenges to that count. Additionally, the court has considered petitioner’s challenge to the remaining contempt count and concludes it does not appear petitioner has persuasively demonstrated an entitlement to writ relief regarding that count. Therefore, this alternative writ does not extend to that claim.

If respondent superior court complies with this court's directives as set forth above, and does so on or before September 5, 2017, the court will dissolve the stay previously imposed, discharge the alternative writ, and dismiss the petition as moot.

This court requests that respondent superior court inform this court of its decision as soon as possible, and provide this court with copies of any new orders issued by respondent.

Should respondent court choose not to follow the above procedure, but instead to appear and show cause before this court why a peremptory writ of prohibition should not issue, this matter will be heard before Division Five when ordered on calendar.

The alternative writ is to be issued, served and filed on or before August 4, 2017, and shall be deemed served upon mailing by the clerk of this court of certified copies of the alternative writ and this order to all parties and to respondent superior court.

A written return to the alternative writ shall be served and filed on or before September 20, 2017, and a reply to the return shall be served and filed on or before October 5, 2017. (Cal. Rules of Court, rule 8.487(b).) If, however, respondent superior court complies with the alternative writ, and proof thereof is filed herein on or before those dates, then no return or reply need be filed.

Date AUG - 3 2017

Simons, J. Acting P.J.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

WARREN HAVENS,

Petitioner,

v.

SUPERIOR COURT FOR THE COUNTY OF

ALAMEDA,

Respondent;

SUSAN UECKER,

Real Party in Interest.

A150411

Alameda No. 2002070640

ALTERNATIVE WRIT OF PROHIBITION

To the Superior Court of the State of California, in and for the County of Alameda, Greetings:

The petition for writ of habeas/certiorari/prohibition on file herein having been considered and good cause appearing for the issuance of this alternative writ of prohibition,

WE COMMAND YOU, forthwith upon receipt of this writ to either:

(a) Take no further action on the December 14, 2016 "Order Holding Warren Havens in Contempt for Failure to Comply with Court Orders," in *Arnold Leong v. Warren Havens, et al.*, Case No. 2002-070640, other than to vacate the finding that petitioner's September 2, 2016 filing to the Federal Communications Commission violated a court order, and to impose a new punishment excluding this contempt finding; OR;

(b) In the alternative, show cause before this court when ordered on calendar, why a peremptory writ of prohibition should not issue.

Respondent court shall make a decision whether to comply with the directive of paragraph (a) on or before September 5, 2017. If respondent court chooses to comply, the stay will be dissolved, the alternative writ will be discharged and the petition will be dismissed as moot. If respondent court instead elects to show cause, the matter will be heard when ordered on calendar.

This court requests that respondent superior court inform this court of its decision as soon as possible, and provide this court with copies of any new orders issued by respondent.

Witness the Honorable Mark B. Simons, Acting Presiding Justice of the Court of Appeal of the State of California, First Appellate District, Division Five.

Attest my hand and the Seal of this Court this 3rd day of August, 2017.

DIANA HERBERT
Clerk of the Court

By: A. Reasoner
Ann Reasoner
Deputy Clerk

I, DIANA HERBERT, CLERK OF THE COURT OF
APPEALS STATE OF CALIFORNIA, FIRST
APPELLATE DISTRICT, DO HEREBY CERTIFY
THAT THIS PRECEDING AND ANNEXED IS A
TRUE AND CORRECT COPY OF THE ORIGINAL
ON FILE IN MY OFFICE.

WITNESS MY HAND AND THE SEAL OF THE COURT
THIS 3rd DAY OF August 2017

BY Ann Reasoner CLERK
DEPUTY

PROOF OF SERVICE
Arnold Leong v. Warren Havens, et al.
Alameda Superior Court No. 2002-070640

I, Safa Delery, am employed in the City of Walnut Creek and County of Contra Costa, by One Hour.net. I am over the age of eighteen (18) and not a party to this action. On December 19, 2017, I served the document entitled:

DEFENDANT'S DECLARATION IN SUPPORT OF DEFENDANT'S EX PARTE EX
PARTE APPLICATION...

upon the following parties:

RICHARD W. OSMAN Bertrand, Fox, Elliot, Osman & Wenzel 2749 Hyde Street San Francisco, CA 94109 Telephone: 415-353-0999 Facsimile: 415-353-0990 Email: rosman@bfesf.com Attorney for: Plaintiff ARNOLD LEONG	PAUL F. KIRSCH Shopoff Cavallo & Kirsch LLP 601 Montgomery Street, Suite 1110 San Francisco, CA 94111 Telephone: 415-984-1975 Facsimile: 415-984-1978 Email: paul@scklegal.com Attorneys for: Plaintiff ARNOLD LEONG
DAVID A. DEGROOT Sheppard Mullin Richter & Hampton LLP Four Embarcadero Center, 17 th Floor San Francisco, CA 94111 Telephone: 415-434-9100 Facsimile: 415-434-3947 Email: ddegroot@sheppardmullin.com Attorney for: Receiver SUSAN UECKER	

- () **BY MAIL (CCP §1013(a)):** I am readily familiar with the ordinary practice of the business with respect to the collection and processing of correspondence for mailing with the United States Postal Service. I placed a true and correct copy of the above-titled document in an envelope addressed as above, with first class postage thereon fully prepaid. I sealed the aforesaid envelope and placed it for collection and mailing by the United States Postal Service in accordance with the ordinary practice of the business. Correspondence so placed is ordinarily deposited by the business with the United States Postal Service on the same day.
- () **BY EMAIL OR ELECTRONIC TRANSFER:** I caused a copy of the document to be sent from my e-mail address to the persons at the e-mail addressed listed in the service list. I did not, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.
- () **BY FACSIMILE TRANSMISSION (CCP §1013(e), CRC 2.306):** I transmitted the document by facsimile transmission by placing it in a facsimile machine (telephone number 415-352-2701) and transmitting it to the facsimile machine telephone number listed above. A transmission report was properly issued by the transmitting facsimile machine. The transmission was reported as complete and without error. A true and correct copy of the transmission report is attached hereto.
- () **BY OVERNIGHT DELIVERY (CCP §1013(c)):** I am readily familiar with the ordinary practice of the business with respect to the collection and processing of correspondence

1 for mailing by Express Mail and other carriers providing for overnight delivery. I placed
2 a true and correct copy of the above-titled document in an envelope addressed as above,
3 with first class postage thereon fully prepaid. I sealed the aforesaid envelope and placed
it for collection and mailing by Express Mail or other carrier for overnight delivery in
accordance with the ordinary practice of the business. Correspondence so placed is
ordinarily deposited by the business with Express Mail or other carrier on the same day.

4 () **BY PERSONAL SERVICE UPON AN ATTORNEY (CCP §1011(a)):** I placed a true
5 and correct copy of the above-titled document in a sealed envelope addressed as indicated
6 above. I delivered said envelopes by hand to a receptionist or a person authorized to accept
7 same at the address on the envelope, or, if no person was present, by leaving the envelope
in a conspicuous place in the office between the hours of nine in the morning and five in
the afternoon.

8 () **BY MESSENGER SERVICE:** I placed a true and correct copy of the above-entitled
9 document in a sealed envelope addressed as indicated above and provided it to a
professional messenger service for delivery during normal business hours on this date.

10 () **BY PERSONAL SERVICE UPON A PARTY (CCP §1011(b)):** I placed a true and
11 correct copy of the above-titled document in a sealed envelope addressed as indicated
12 above. I delivered each envelope by hand to a person of not less than eighteen (18) years
of age at the address listed on the envelope, between the hours of eight in the morning and
six in the evening.

13 I declare under penalty of perjury, under the laws of the State of California, that the
foregoing is true and correct.

14 Executed on December 19, 2017, at Walnut Creek, California.

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17
18 _____
Safa Delery
OneHour.net
2920 Camino Diablo #100
Walnut Creek, CA 94597
Phone: (888) 311-1221

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